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THE LIVES OF THE NORTHS.

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THE LIVES OF THE
RIGHT HON. FRANCIS NORTH, BARON
GUILFORD; THE HON. SIR DUDLEY
NORTH; AND THE HON. AND
REV. DR. JOHN NORTH.

BY THE HON.

ROGER NORTH,

TOGETHER WITH

THE AUTOBIOGRAPHY OF THE AUTHOR.

EDITED BY

AUGUSTUS JESSOPP, D.D.

IN THREE VOLUMES.

VOL. I.

LONDON: GEORGE BELL AND SONS, YORK STREET,
COVENT GARDEN.

1890.

TO

MARIANNE NORTH,

A LINEAL DESCENDANT OF THE AUTHOR OF THESE LIVES,
TO WHOSE GENEROUS ASSISTANCE AND SYMPATHIZING ENCOURAGEMENT
THE ORIGINAL PUBLICATION OF THE AUTOBIOGRAPHY WAS
LARGELY DUE.

THESE VOLUMES, PRESENTING FOR THE FIRST TIME THE WORKS
IN A POPULAR AND EASILY ACCESSIBLE FORM, ARE
AFFECTIONATELY DEDICATED BY
AUGUSTUS JESSOPP.

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EDITOR'S PREFACE.

IT is just 150 years since the *Life of the Lord Keeper Guilford* was first issued in 4to, followed two years later by the *Lives of Sir Dudley* and of *Dr. John North*. A reprint of the former work appeared, in 8vo, in 1808, and an edition of the collected lives was published in three vols., 8vo, in 1826. Mr. Henry Roscoe, a son of Mr. William Roscoe, of Liverpool, saw the book through the press, and added some useful Notes elucidatory of the text, together with an Index, on which he evidently bestowed great pains. All these editions have become scarce, while the great value of the biographies, as contributions to the history of the time with which they are concerned, has become more than ever recognized.

It had long been known that Roger North had left a considerable fragment of an autobiography in his own handwriting, and that this had once been kept at Rougham. The original manuscript of this work came into the possession of the late Mr. Crossley, of Manchester, about fifty years ago, and more than one overture for its purchase had been made to that gentleman, but in vain. At his death, in 1883, it was sold by auction; and in 1887 I was privileged to print it for the first time. This volume, too, has already become very scarce; it was published only for subscribers, and no copies have yet come into the market, nor is it likely that it will ever be procurable without difficulty.

Meanwhile, there is evidently a growing demand for the *Lives of the Norths*; and it is believed that the issue of the present edition will be welcomed by the ever-increasing

number of students of such history, and by those to whom Roger North is now known only by name as a charming writer with a style of his own, but a writer whose works are accessible to but a comparatively small circle of admirers.

Most of Mr. Roscoe's notes have been incorporated in the present edition. It was thought well, however, to remodel the Index entirely. As a Personal Index I believe it will be found exhaustive.

A. J.

Scarning Rectory,
August, 1890.

TO THE RIGHT HON.
FRANCIS, LORD NORTH AND GUILFORD,

ONE OF THE LORDS OF THE BEDCHAMBER
TO HIS ROYAL HIGHNESS THE PRINCE OF WALES.

MY LORD,

IT is a piece of justice done to the memories of great and good men, who have been active in the service of their country, when their conduct and behaviour is set in a true light, and their character cleared from all exceptions whatsoever, which may proceed either from ignorance of the truth, or party rage. And it must afford no less encouragement to the present age, to follow their steps, when they shall find it is not often that a man of worth appears upon the great stage of the world, but after he has finished the part he was to act, and made his *exit*, some one or other rises up, and undertakes to vindicate the character of his departed friend.

The performance of this, my Lord, appears to have been one of the principal ends the honourable author had in view, when he composed the following sheets: for though truth in history, and the public good flowing from thence, had ever the greatest share in his inducements, whenever he set pen to paper; yet here there must be something put to the account of gratitude. And how large a debt of this nature must be due, from any one, to him that was the best of brothers and the best of friends, the whole world must be sensible. How well the writer has succeeded in his attempt to discharge it, must be left to the determination of those who shall peruse this work.

And the same arguments ought to be no less prevalent with me towards the sending it abroad into the world, and preferring my request unto your Lordship, that it may have leave to pass under your protection. For as my father thought it his duty to leave behind him these papers, not only for the sake of truth, but to make some return for the benefits heaped upon him by this illustrious ancestor of your Lordship's, and his best brother; so I think myself bound to make them public, for the former reason, and to beg they may be honoured with your Lordship's name in the front, as a public acknowledgment of the many favours your Lordship has conferred upon,

MY LORD,

Your Lordship's

most obedient,

and obliged

humble servant,

MOUNTAGU NORTH.

[1740.]

THE
AUTHOR'S PREFACE.

1.

IT may not be improper to acquaint the reader, in some sort, with what is to be found in the following sheets; the design of which is to make some apology for an officious, I might say unqualified, undertaking to be a life-writer, and, as such, to dress up my remembrances of three honourable brothers and friends, the late Lord Keeper North, Sir Dudley North, and Dr. John North. They were all persons of celebrated worth and ability in their several professions; and whose behaviour upon the public stage, as well as in their retirements, was virtuous, wise, and exemplary. But now, if they are not quite forgot, that little, which is whispered of them, inclines to the sinister, and is wider from truth, than the distance which we are now at from the time when they flourished: and, if we look out for their names in history, all is the same. There is a two-handed one, Mr. Echard, in folio, whose excellency is *coming after a worse*. The author, among his eulogies, could not find room to drop a good word of any of these, though he hath condescended to adorn the characters of departed quacks, poets, fanatics, and almanack-makers. When he could say no ill of them, it was prudent malice to say nothing. Better to forego the very marrow of history than do right to any of these. And if the consideration of common good, which always flows from the bright examples of good men, were not inducement enough, yet the usage of such poor-spirited

writers, that hunt counter to that good, is a sufficient call to this undertaking; whereby I hope to rescue the memories of these distinguished persons from a malevolent intent to oppress them, and, for that end, bring their names and characters above-board, that all people may judge of them as they shall appear to deserve. I have reason to be concerned, lest my tenuity of style and language, not meeting with candid interpretation, may, in some sort, diminish the worth that belongs to them. But I have no means of improvement in that affair; and must lay aside that scruple; for it is an office devolved upon me, which I cannot decline. There is no person, now living, who can, or at least will, do any thing towards it. Therefore, hoping for indulgence, I march on, and endeavour to rectify want of art by *copia* of matter, and that, upon honour, punctually true. But I am not at all concerned lest frequent eulogies (which, by way of *avant propos*, I must here declare will advance themselves) should make me appear as partial to my subject. For who is partial that says what he knows, and sincerely thinks? I would not, as some, to seem impartial, do no right to any. When actions are honourable, the honour is as much the history as the fact; and so for infamy. It is justice, as well historical as civil, to give to every one his due. And whoever engageth in such designs as these, and governs himself by other measures, may be a chronographer, but a very imperfect, or rather insipid, historian.

2. I must here just mention some things which concern all these three brothers in common; and that is their parentele and family relation: and then proceed to the lives, beginning with the eldest, the Lord Guilford, lord keeper of the great seal of England, then the second, Sir Dudley North, and come at last to Dr. John North, master of Trinity College, Cambridge.

3. Sir Dudley North, knight of the Bath, and Lord North, Baron of Kirtling (*vulgo Catlidge*) in Cambridge-shire, was their father. His father was Dudley also, and had three other children. First, a son named John, who had three wives, of whom the first best deserves to be remembered; for she left him an estate in St. John's-Court by Smithfield, upon the ground where the chief

house and garden was placed ; and now a set of fair houses are built, making three sides of a square, and is called North's-Court. He survived all his wives, and died without issue. The old lord had also two daughters, of whom one died single, the other, Dorothy, married the Lord Dacres of the south, and, by that match, had a son and a daughter ; the son married the Irish Lord Loftus's daughter, and had divers children. He had an estate given him on purpose to change his name from Lennard (that of the Dacres family) to Barret. His eldest son is also matched, and hath children. His seat is at Bell-House Park, near Purfleet in Essex ; and they write their name Barret, alias Lennard. The Lord Dacres had issue by a former wife, of whom the now Earl of Sussex is descended. After the death of the Lord Dacres, his widow, the Lord North's daughter, married Chaloner Chute, who was once speaker to the pseudo-house of commons. She had no issue by him ; but his son Chaloner (by a former wife) marrying his wife's daughter (by the Lord Dacres) had issue three sons and a daughter. Chaloner, the eldest, died single ;¹ Edmund, the second, married the widow of Mr. Tracey, a daughter of Sir Anthony Keck, and having divers children, lived at the Vine in Hampshire. The youngest, Thomas, was once clerk of the crown in Chancery, and married [Elizabeth], the daughter of [Nicholas] Rivet of Brandeston in Suffolk, and left children, of whom Thomas Lennard Chute, the eldest son, now lives at Pickenham in Norfolk. And here concludes all the descent from the old Lord North by his only married daughter the Lady Dacres.

4. That nobleman was a person full of spirit and flame ; yet, after he had consumed the greatest part of his estate in the gallantries of King James's court, or rather his son Prince Henry's, retired, and lived more honourably in the country upon what was left, than ever he had done before.²

¹ 16 Nov., 1685. (Chaloner W. Chute's *History of The Vyne*, 1888.)

² He was the author of a volume of miscellanies in prose and verse, entitled, *A Forest promiscuous of several Seasons' Productions*. In four parts, fol. 1659. "The prose," says Horace Walpole, "which is affected and obscure, with many quotations and allusions to scripture and the classics, consists of letters, essays, characters, in the manner of Sir Thomas Overbury, and devout meditations on his misfortunes. The

He bred his eldest son Dudley, the father of these three brothers, after the best manner; for, besides the court, and choicest company at home, he was entered among the knights of the Bath, and sent to travel, and then into the army, and served as a captain under Sir Francis Vere. At length he married Anne, one of the daughters and coheirs of Sir Charles Mountagu. He served his country in divers parliaments, and was misled to sit in that of forty, till he was secluded. After which he lived privately in the country, and, towards the latter end of his life, entertained himself with justice-business, books, and (as a very numerous issue required) economy. He put out a little tract of that subject, with a preface lightly touching the chief crises of his life. Afterwards he published a small piece entitled "Passages relating to the Long Parliament," with an apologetic, or rather, recantation preface.¹ He wrote also the history of the life of the Lord Edward North, the first baron of the family, from whose daughter² the dukes of Beaufort are descended. He was a christian speculatively orthodox and good; regularly charitable and pious in his family, rigidly just in his dealing, and exquisitely virtuous and sober in his person. All which will appear in his writings, although the style is not so poignant as his father's was. But, to pursue the relation, his lady, by the mother's side, was descended of Sir George Whitmore, once lord mayor of London; which opens a large kindred towards Wales, of which it is said that above thirty came into coparcenary shares of the estate of Sir Charles Kemish. Her father was the before-mentioned Sir Charles Mountagu, of five the youngest brother, of the Boughton family, now honoured with a dukedom. From the other brothers as many noble families are also derived, as Manchester, Sandwich, and Halifax. Sir Charles had

verse, though not very poetic, is more natural, and written with the genteel ease of a man of quality." (*Royal and Noble Authors*, vol. i. p. 232.) Copious extracts from this volume are given in the *Memoirs of the Peers of England during the Reign of James I.*, p. 343.

¹ Printed in the *Somers' Tracts* (vol. vi. p. 565. Scott's edit.). Horace Walpole has negligently ascribed this tract both to its true author and to the Lord Keeper Guilford. (See *Royal and Noble Authors*, vol. ii. pp. 36, 63.)

² Christian North, wife of William, third Earl of Worcester.

two other daughters, one married the Lord Hatton, and had divers children, and, amongst the rest, the incomparable¹ Captain Charles Hatton. The other daughter married Sir Edward Bash, of Hertfordshire, who died without issue; then she married Mr. John Cary of the Falkland family, and master of the buck-hounds under King Charles II., and died also without issue.

5. This last Dudley North and his lady had six sons and four daughters who lived to appear in the world, besides some who died in minority, viz. Frances, Edward, and Dorothy. The eldest son was Charles, who received the honour of knighthood, and married Catherine, the daughter of William Lord Grey of Wark, and was, in his father's lifetime, called by writ to the house of peers, by the title of Charles Grey of Rolleston. They had two sons and two daughters who survived. The eldest son, William, is the present Lord North and Grey, who is matched with Maria Margareta, one of the daughters of Mr. C. de jonge van Ellemete, late receiver of the United Netherlands.² The second son, Charles, a major in the late wars in Flanders, died there of a calenture. The eldest sister, Catherine, died at sea, coming from Barbadoes: and the youngest, named Dudleya, having emaciated herself with study, whereby she had made familiar to her, not only the Greek and Latin, but the Oriental languages, under the infliction of a sedentary distemper, died also; and both without issue. Her library, consisting of a choice collection of Oriental books, by the present Lord North and Grey, her only surviving brother, was given to the parochial library of Rougham, in Norfolk, where it remains. The Lord North's second son, Francis, the third son, Dudley, and the fourth, John, are the subject of the three life treatises intended to follow, where will be remembered the state of their families. The fifth son was Mountagu, a Levant merchant, who died without issue. The youngest,

¹ [The reason why the honourable author joins the epithet *incomparable* to this gentleman's name will be seen from a story which will be related in the life of Dr. John North.] *Note in the first edition.*

² William Lord North and Grey died without issue, 31st. Oct., 1734; and on his death, the title of Lord North descended to Francis Lord Guilford, the grandson of the lord keeper.

Roger, married Mary, the daughter of Sir Robert Gayer, of Stoke Poges, near Windsor, and having had two sons, Roger and Mountagu, and five daughters, Elizabeth, Ann, Mary, Catherine, and Christian, lives (out of the way) at Rougham, in Norfolk.¹

6. Of the four daughters of Dudley Lord North, the eldest, Mary, was married to Sir William Spring of Pakenham, by Bury, in Suffolk. She had issue a son, but lived not to have any more, and the son died in his infancy. The second daughter, Ann, married Mr. Robert Foley, a younger branch of the (now) Lord Foley's family; and their eldest son, North Foley, having married a daughter of Sir Charles Holt, of Warwickshire, lives now at Stourbridge, in Worcestershire. The third daughter, Elizabeth, married Sir Robert Wiseman, a younger son of the Rivenhall family, in Essex, dean of the arches, who, dying without issue, she is since married to the Earl of Yarmouth. The fourth and youngest daughter, Christian, married Sir George Wenieve of Brettenham, in Suffolk. And they have left divers children; of whom the eldest, John, married a daughter of Sir Christopher Musgrave, and now resides in the place of his father at Brettenham.

7. This is the family relation of these three brothers, whose lives are upon the carpet before me. So much of particularity concerning them (although a just pedigree ought to have taken in much more) may perhaps be thought superfluous, as not being of any general concern. Yet really the case is memorable for the happy circumstance of a flock, so numerous and diffused as this of the last Dudley Lord North's was, and no one scabby sheep in it, and considering what temptations and snares have lain in their way, is not of every day's notice. It was their good fortune to be surrounded with kindred of the greatest estimation and value, which are a sort of obligation to a good behaviour. It is very unfortunate for any one to stray from the paths of virtue, who hath such precautions, and sonorous mementoes, on all sides of him: and it is almost enough to be educated in a family wherein was no instance of irre-

¹ This passage shows that Roger North only set himself to write the life of his brother after the birth of all his children, and when he was advanced in life.

ligion or immorality either practised or allowed: such virtue or efficacy hath an early example to affect the manners of good-natured youth. I would not have it thought that, beyond this advantage, I hold forth a family relation, as matter of merit, to any one in particular; but say only that, allowing no peculiar intrinsic worth in a particular person, derivable from the honour of his family (because his own value, and not his ancestors' must set him off), although such a circumstance is not to be slighted, yet there is some good comes of it, which is that the descendants must know that the world expects more from them than from common men: and such a perpetual monitor is an useful companion. And if there be any persons of such upstart principles that, with them, antiquity of families is rather matter of ridicule than of honour, let them enjoy their epicurean prospect, and see their posterity run riot into destruction, before the earth covers the corruptible ingredients of their composition.

THE LIFE
OF
THE RIGHT HON. FRANCIS NORTH,
LORD GUILFORD;

LORD KEEPER OF THE GREAT SEAL OF ENGLAND.

1.

MY design is to leave behind me all that I can remember or warrantably collect concerning the life of the Lord Keeper North. A work much needed; and to which I am indeed provoked because I find an affected endeavour of a prevailing sort of men in these latter times, and especially the more solemn writers of English affairs, to suppress all memory of his lordship's name and worth, to the end that his character and behaviour in the course of his great employments should be utterly unknown to aftertimes, as if no such person had ever lived in the world. I shall allege but one instance, and that is an egregious one. A late double-columned historian,¹ in folio, of whom mention has been made already in the preface, writing the affairs in England and in particular what fell out in the reign of King Charles II., hath taken upon him to characterise the famous men that died in his several years; and yet of the

¹ Kennet. (*Complete History of England*, 3 vols. fol., 1706, vol. iii. 2.)

Lord Keeper North no single word slips from his pen, and one must look very hard to find so much as his name in the whole work : and, considering the value of that great justiciar (which I hope will be made appear in what follows), is not so notorious partiality in such a pompous writer of history wonderful ? But not only there, but in all the other writers of those times when the quality of those things related require him to be named, however the actions or occasion might deserve, it is done in an ill-natured manner and with a leer, implying rather disgrace than any honour to his memory. And since his death we do not find in ordinary converse or consultation of things past, any mention of him or, at most, but as one that had been preferred to serve turns ; and so dying there was an end of him.

2. Now here, to make the fairest construction of this silence in a case so eminent and ascribe it chiefly to ignorance, although I think time-servingness and malice hath the greatest share, I will show that in his lordship's case there was less obvious means for fame than in any other great man's case whatever. For first, he was quite out of favour with the busy agitating party of men in his time, then termed the fanatic party ; and those are the chief architects of fame : and having nothing ill to say of him, they would say no good, and therefore chose to say nothing at all. If he had acted in these men's measures and, betraying his master, took in with them and become their property, he had certainly been the most illustrious hero in the law that ever was heard of. Another reason is derived from his lordship's own conduct of himself, which was always with the greatest modesty and the least affectation of fame that could be. He rather withdrew himself from it, as being in his opinion an empty vanity ; and ever labouring to act well and substantially, as concerned for the truth and intelligence of things and not for any honour to be got thereby, he scarce ever did any thing for show or spoke a word for the sake of mere sound or ostentation ; but in all he did, to have reason on his side and to make himself therein readily understood, was all that he aimed at : otherwise he bore himself retired from public view and eclat as much as ever he could. It is no great wonder therefore that nothing pompous hath been remembered of him. If he had carried it high, headed par-

ties and embraced the management of what had not belonged to him and the like, it had been otherwise; or if he had printed his collections in the law, of which he had made some considerable, or the other tracts he had in his mind to make fit for the use of his time, or done any thing else which ordinarily great men do for fame and honour he might have left a name behind him great as he deserved; but he never let any thing come to the press under his name but what belonged to his office, or was absolutely necessary for his vindication. It is no wonder therefore that (the malice or ignorance of historians apart) there is so little remembrance of this noble person's life and actions (so near his time as we are) now extant; and probably after a reign or two more, bating a formal list of Lord Keepers that lets none escape, his very name will be forgot.

3. Here is reason enough to incline any one endued with competent information on the subject, and a literate capacity to digest and express what he knows thereof, to rescue this honourable person and his great abilities, his approved justice and integrity and universal good-will, from utter oblivion by writing the history of his lordship's life. But where do those qualifications concur? The very expectation of them puts me in mind of latter Lammas. But it is usual to say, what good cannot be done in perfection as it should be ought to be done though but in part or as it may be. And upon force of that consideration I am inclined to undertake it; for, if I am wanting in capacity to write as the subject deserves, I am capable of informing others who may do it better; and am therein farther urged by the consideration of my former felicities. For it was my good fortune to be so nearly allied to him and, by circumstances of education and profession, so closely attached to his person that we were almost inseparable. Therefore, upon the strength of the latter of these qualifications, whatever becomes of the former which in sense of my own inability I forbear to claim, I am induced to undertake this great work, which I would have understood to be rather instructions than history. And if I am required to give an account of my great confidence therein I must allege that, if I am not the best instructed of any man living for it it is my own fault; because I passed almost all the active time of my life in his

company. And now almost all persons of his intimacy, capable or concerned to remember much of him, are dead, or at least after so many years, thoughtless of all they might once have known concerning him : but I am at this time left a living and sensible witness of his most public and most retired behaviour ; and moreover a well-qualified compurgator of all his thoughts and actions : and who else should be called upon to show to posterity what he was ? And also that there was once a magistrate of a kind, since the loss of him (barring all comparisons) rather to be wished than hoped for. And not only to supply history, which (after the partial gree of the late authors) has been to all good purposes silent of him, but also to refel calumny, whether spread abroad in his life to supplant his interests and to enervate his authority, or late published after his death to depreciate his memory ; of which several species of malice we had and have yet some extant but little, and even that little very impotent and inconsiderable : yet I cannot but think it in me a sort of duty to puff away such slight dust, because calumny which riseth after a man's death (the most unworthy and degenerous of all) needs most a friend to retund it ; because, as a man's authority and power ceaseth, impudence gets ground and thinks to ramp it without check ; but of these affairs the particularities are referred to their proper situation. And here I must not omit one of the chief impulses upon my spirits to undertake this work ; I mean gratitude : for as on the one side no man is obliged to serve a friend or benefactor by any gross immoralities, for that must be termed conspiracy not friendship ; so, on the other side, no man ought to be wanting to a friend in any manner of justice for no better reason than that some folks will misconstrue it, as being done for partiality. I own that all my portion of knowledge and fortunes are owing to him ; which makes me a debtor in account of justice and honour due to his memory ; and for clearing myself as well as I may (protesting in the meanwhile to say nothing false or disguised), shall I not say what is just and true of him ? I defy all calumny on that account and I hope to acquit myself accordingly. And whereinsoever I may fail or come short of the fulness or ornament such a subject requires, I design securely to set down nothing but what either personally

I know and can attest, find declared in his writings, received from his own mouth or have from indubitable report of others nearly enough informed to be esteemed punctually true. I have another reason yet, which for true value may surmount all these ; and that is a tendency to public good : a charm that all writers anoint their front with. Therefore I say only this that if, in the character of a person of honour, I show an example of industry, ingenuity, probity, virtue, justice, and, in the course of all these, deservedly successful without one minute retrograde, but concluding all at once by a natural death and that in the height of his honour, I shall commit no act of disservice to mankind in general and least of all to those of the nobility, whose descendants embarking in the profession of the law may find the greatest encouragement from it. It may be thought I have touched here too much upon the panegyric and forget how hard it is to make good such promises. I must trust to that ; and do but allege here that the nature of this work and my reasons for undertaking it, required no less ; which being the proper introduction I have not formalised upon what I am fully possessed is most true.

4. It will be hard to lead a thread in good order of time through his lordship's whole life ; for there are many and various incidents to be remembered, which will interfere and make it necessary to step back sometimes and then again forwards ; and to say truth, I have not the punctualities of truth at my command and may err in some points of chronography. I shall therefore, for distinction's sake break the course of his lordship's life into four stages ; whereof the first shall be from his lordship's infancy to his being qualified to practise in the law and called to the bar : the second shall be from the time of his first practice until he was advanced to the post of a judge and made Lord Chief Justice of the Common Pleas : the third, while he acted as judge of the Common Law until he was preferred to be Lord Keeper of the Great Seal : and the fourth and last stage, while he sat as judge of Equity in the Chancery and attended the affairs of state at court until the time of his death, which happened at Wroxtton, on the 5th of September, 1685. And, in this method, I hope to evacuate my mind of every matter and thing I know and can re-

member materially concerning his lordship. And if some things are set down which many may think too trivial, let it be considered that the smaller incidents in the life of a busy man are often as useful to be known though not so diverting as the greater ; and profit must always share with entertainment : and let this be the apology for some light passages that will be found related in the course of this work.

5. His lordship left many papers wrote with his own hand, some more perfect than others and very few entirely so ; and those which are finished or nearly completed according as he intended them, I have put together in collections ; but as for those which are short and imperfect, consisting of some sketches of designs, hints, consultations, collections, inquiries, and the like, which commonly were the result of his thoughts and researches upon affairs then in agitation abroad and are like painters' first scratches, which commonly have more spirit than their more finished pieces, I shall insert the most material of them in the text of the relations to which they belong ; for these will represent his lordship's way of reasoning with himself and others, and how close his thoughts were applied to the substance and truth of things, more perhaps than (as was hinted of painters) his fuller tracts will appear to do ; and by this means I hope to give a clear account of all I know or can gather of his lordship's life, interior and exterior, whereby in one place or other there may be found a great man's life and entire character ; and besides what will serve to entertain any one who hath a mind to drone away a few minutes that sleep will not consume, and also improve (perhaps) some whom the love of truth, reason, and rectitude of will, shall dispose to be more attentive.

6. His lordship was the third son of the second Dudley Lord North, Baron of Kirtling, &c.,¹ as is to be found in the preface before this work, and therefore shall not reiterate it here. We have little to say of him during his minor years, but shall make amends afterwards ; for from the first to the last of his manhood he walked the public

¹ Baptized 2 Nov., 1637. (*Kirtling Register.*)

stage of business ever erect and rising, and made no retreat or exit but one, and that (as I said before) was from the top of his preferment and the world together.

7. His lordship was very young when he was first put out to school and then had but indifferent tutorage, for his first master was one Mr. Willis, that kept a school at Isleworth. That man was a rigid presbyterian and his wife a furious independent. Those two sects at that time contended for pre-eminence in tyranny and reaping the fruits of too successful rebellion, which conjured up a spirit of opposition betwixt them so that they hated each other more than either the bishops or even papists themselves. Such is the ordinary curse of God upon men permitted to prosper in wickedness: and this woman was so zealous in her way, that thinking it a sin, she would scarce let her carnal husband have conjugal intimacy with her. She used to instruct her babes in the gift of praying by the spirit; and all the scholars were made to kneel by a bedside and pray: but this petit spark was too small for that posture, and was set upon the bed to kneel with his face to a pillow; and in this exercise of spiritual prayer they had their directory from her. I have heard his lordship say, that all he could remember of his performances was praying for his distressed brethren in Ireland. Very often men in their lives cross the humour of the age in which they had their first education; and in fact it happened so here; for this youth went from one of these fanatic schools to another for divers years, and afterwards being grown up was very averse to fanaticism; as if he had in his education contracted rather a prejudice than a favour for it.

8. But much may be attributed to the finishing of him at Bury school, under Dr. Stevens, a cavalier master. He was so forward and exact a scholar there, that the bulky doctor in his pedantic strain used to say he was the crown of all his endeavours. Before he went to Cambridge the master employed him to make an alphabetical index of all the verbs neuter; and he did it so completely that the doctor had it printed with Lilly's grammar, for the proper use of his own school. This, however easy to be done, (being only transcribing out of the dictionary) was commendable; because boys ordinarily have not a steady ap-

plication and, being required, seldom perform industriously and neatly such a task as that is.

9. From this school he was translated to St. John's college, in Cambridge, where he was admitted fellow-commoner under one Mr. Frost, the 8th day of June, 1653. And there he improved at the same rate, and being a fellow-commoner was acceptable to the very best of the society as well for his company, which was more than ordinary agreeable and facetious, as for his forwardness in all ingenious studies and the sciences called liberal. Here he learnt what was to be had of University philosophy old and new: applied to mathematics and made great advances in them, capable of the utmost course therein if other affairs of his life inconsistent with such applications had not forbid that. But he was ever a judge of new propositions after the synthetic way (for the analytic was not then much professed), and if they failed could show where; and here he began his use of music, learning to play on the bass-viol, and had the opportunity of practice so much in his grandfather's and father's families, where the entertainment of music in full concert was solemn and frequent, that he outdid all his teachers and became one of the neatest violists of his time. He was much encouraged and assisted in all ingenious studies by the conversation of one Mr. Matthews, of Sidney college, who was his elder brother's tutor and very eminent for a master (literally) of all arts and sciences and was entrusted with the education of divers noblemen as their tutor; and a famous man he had been indeed if his heart could have been showed without a microscope.

10. His lordship was originally designed for the profession of the law; and accordingly, after two or three years spent at the University, removed to the Middle Temple into a moiety of a petit chamber which his father bought for him. He was admitted in the year [27 Nov., 1655], when old Chaloner Chute was treasurer. It was he that sometime officiated as speaker to the pseudo-House of Commons¹ and had married the Lady Dacres,² his lord-

¹ From 27 Jan. to 14 April, 1659.

² Dorothy, daughter of Dudley the third Lord North, m. 1st, Richard,

ship's aunt, and so was in the place of an uncle. This Mr. Chute was a man of great wit, and stately carriage of himself: I shall mention here what I have been credibly told as one instance of his loftiness, even while he practised in Chancery. It was in short but this: if he had a fancy not to have the fatigue of business, but to pass his time in pleasure after his own humour, he would say to his clerk, "Tell the people I will not practice this term;" and was as good as his word: and then no one durst come near him with business. But when his clerks signified he would take business, he was in the same advanced post at the bar fully reintegrated as before, and his practice nothing shrunk by the discontinuance. I guess that no eminent chancery practiser ever did or will do the like; and it shows a transcendent genius superior to the slavery of a gainful profession. But to proceed: when Sir Dudley North, his lordship's father, carried him to his brother-in-law, then treasurer of the Middle Temple, to be admitted, he treated hard with him about the fine of admission, which is in the treasurer's power to tax and he may use any one well if he pleaseth. Mr. Treasurer asked Sir Dudley what he was willing to give, and (the common fine being five pounds) he answered, Three pounds ten shillings, "Well," said the treasurer, "lay down the money." Which being done, he called for the young man's hat, and swept it all in and gave it him; and marking the admission *nil*, or nothing, "let this," said he, "be a beginning of your getting money here;" where his lordship made good the omen.

11. How sedulously he applied himself to the study of the law I need not allege; his performances in the course of his profession, to say nothing of his preferments (though sometimes perhaps owing to good fortune) demonstrate he was not wanting in that application: but it was singular and remarkable in him that, together with the study of the law, which is thought ordinarily to devour the whole studious time of a young gentleman and at best is but an unpolite study, he continued to pursue his inquiries into

thirteenth Lord Dacre; 2nd, Challoner Chute of the Vyne, 1634. His son Challoner married her daughter Catherine. § 58.

all ingenious arts, history, humanity, and languages; whereby he became not only a good lawyer but a good historian, politician, mathematician, natural philosopher, and I must add, musician in perfection. I have heard him say, that if he had not enabled himself by these studies, and particularly his practice of music upon his base or lute-viol (which he used to touch lute fashion upon his knees) to divert himself alone, he had never been a lawyer. His mind was so airy and volatile he could not have kept his chamber, if he must needs be there staked down purely to the drudgery of the law whether in study or practice: and yet upon such a leaden proposition, so painful to brisk spirits, all the success of the profession regularly pursued depends. And without acquiring a capacity of making a solitary life agreeable, let no man pretend to success in the law. I have heard his lordship often remember a lesson the citizens used to their apprentices—"Keep your shop, and your shop will keep you;" as being no less true of a lawyer with respect to his chamber. But he was far from being a recluse; and as he loved conversation, so at fit times he was abroad with agreeable company at entertainments such as the inns of court gentlemen ordinarily use.

12. I never heard that he frequented either dancing or fencing schools; which two rendezvouses are very dangerous as well as expensive to young gentlemen; and that consideration outweighs all the pretended advantages that the female faction propose from those assemblies. And for security of future good consequences and escaping the bad, I think it may be a general rule in the institution of a lawyer never to come to either; for since it is well known that the accidents of good or bad company determine ordinarily a young man to his happiness or ruin, and that the worst of company is to be met with there, one may bate the decorums of the step or the skill of parry and thrust in one who is to wear a long robe, and contend only with his oral faculty. I might say as much of places of game; but that entertainment is a gulph which swallows more elder than younger brothers, and more that have money gotten to their hands than such as have but enough to live in a way as may enable them to get more; but I cannot say that his lordship was a stranger to any art or skill that was

practised amongst the better sort of company. He joined in every decent thing; and whatever games were stirring at places where he retired, as gammon, glee, piquet, or even the merry main, he made one; but ever had a notable regard to his purse to keep that from oversetting, like a vessel at sea that hath too much sail and too little ballast.

13. It is impossible for any youth to gather sociable good qualities without running some hazard of the bad; and much of the better where it happens will be ascribed to a well-inclined nature, that, after excesses (which youth cannot wholly avoid) discerning the inconvenience, takes up. But yet in some of the wavering and less thinking geniuses the worst of company will cause the worst of effects; whereas in a tolerable society at first such natures might have come off well enough. It were rare sailing if winds and weather were either at command or foreseen. So, in the launching young people into the world, it were happy if natural propensities and company could be known beforehand or modelled to the occasion. Therefore that great work ever did, and ever will, depend much upon the common accidents of human life; and it is a great question, whether too much or too little use of over-ruling authority or persuasive discourses do most or least harm. Probably either coming opportunely may do good; but, inopportunely, excites aversion rather than reconciliation to what is so. Let a youth be prepared at home without any prejudice of evil examples or encouragements, and then be sent out, as his lordship was, to shift for himself; the rest must be left to Providence.

14. His lordship had reason, and also the good hap, to be sensible of his condition, and that it concerned him in the last degree to make the best of his profession. For his family was not in a posture to sustain any of the brothers, by estates to be carved out of the main sustentation of the honour. It was apparent that his lordship was far from a morose or so much as a retired disposition; he had sprightly motives to follow the joys his fancy suggested as much as any wit of them all, and was sensible of the labour and pains he was to undergo and set himself to it as labourers to their work for a livelihood; and after he had broke himself to the study of the law so as might have rendered it

easier to him, yet he had his inclinations to divert himself and ramble as persons of better fortunes did. But, through the strength of his reason, he recollected himself and persevered and engaged in no entertainments abroad that were inconsistent with his studies. I have heard him say more than once that, if he had been sure of a hundred pounds a year to live on, he had never been a lawyer.

15. His lordship's grandfather took a fancy to have him be with him in the country; for he loved to hear him talk of news, philosophy, and passages in London. He made him play at back-gammon, and fiddle whenever he thought fit; for which, all he got was saving a little charges at the Temple, and an annuity of twenty pounds a year; which latter was taken away from him in displeasure, as is related afterwards.¹ But this course of life, together with bowling, fishing, billiards, park, hunting, visiting, and such country diversions which might have plunged a young man in idleness and resignation of all endeavours towards a profession, did him no hurt at all; but rather the contrary, for he always had his boxes of books up and down by the carrier; and, in the country, alone by himself read in his course, and commonplacéd full as much, or perhaps more than he should have done in London. And the only disadvantage he had there was want of a studious society; but constantly at terms, he got leave to repair to London and there recruited his discontinued friendships, which were of vast benefit to him, as will be related afterwards.

16. He used constantly the commons in the hall at noons and nights, and fell into the way of putting cases (as they call it), which much improved him; and he was very good at it, being of a ready apprehension, a nice distinguisher, and prompt speaker. He used to say that no man could be a good lawyer that was not a put-case. Reading goes off with some cloud, but discourse makes all notions limpid and just; for in speaking a man is his own auditor (if he had no others at hand) to correct himself. Besides, there are diversities of opinions, and contentions in reasoning, which excite thoughts that otherwise would never have risen. And mistakes, almost incredible to the mistaker,

¹ Cf. § 30

being observed, cause a recurrence, for surety, to the authorities, where an inspection convinceth, and withal corrects the faulty assurance some will have in a mere memory.

17. It was his lordship's constant practice to commonplace as he read. He had no bad memory, but was diffident and would not trust it. He acquired a very small but legible hand; for where contracting is the main business, it is not well to write, as the fashion now is, uncial or semi-uncial letters to look like pigs' ribs. His writing in his commonplaces was not by way of index but epitome; because, as he used to say, the looking over the commonplace book on any occasion gave him a sort of survey of what he had read about matters not then inquired, which refreshed them somewhat in his memory: and that had not been obtained in a way of mere what and where, as the style of most indexes runs. When this manner of writing is comprehensive or pregnant it is called abridgment, of which there are divers large ones of the common law in print, as Fitzherbert, Brook, &c., and are like those the civilians call summists, which with them are not allowed as authority. Certainly it is an error for a student to peruse such; it being like reading over a dictionary which never teacheth a language. And for that reason, Coke's comment upon Littleton ought not to be read by students, to whom it is at least unprofitable; for it is but a commonplace and much more obscure than the bare text without it. And, to say truth, that text needs it not; for it is so plain of itself that a comment properly so called doth but obscure it.¹ In the disposition of the titles, he chose rather to make many than few and thereby to become forced (as some have done) to make out the rest by subdivisions; for it is easier to consult with many generals to which the alphabet leans, than few with many subdivisions; the latter requires an exact skill in the method which, though well understood, is often forgot. And therein Mr. Keeble's table to his statute-

¹ In his *Discourses on the Study of the Laws* (p. 22), North has observed that the Commentary of Sir Edward Coke "is the confusion of a student, and breeds more disorder in his brains than any other book can, that is not a mere index and abridgment." The practice of placing this inestimable work in the hands of the student, as an elementary treatise, is now deservedly discontinued.

book is faulty; for if one would look for the title Executors he must go to title Administrators, because the author thought fit to make that the general title for all or most testamentary matters. Were it not better to make executors, probate, devastavit, &c., titles express? He made divers essays towards a commonplace, which did not succeed: but it purchased experience at the expense of so much paper, before his method and way of writing was settled and obvious to him; and then he made a very good one, such as may be styled an abridgment, which now remains with the Right Honourable the Lord Guilford. He used to say that no writing, though in a commonplace, however improper, was of any ill consequence; for, by making searches difficult, the very going to several titles for the same inquiry refreshed the memory of other things: and it was not at all amiss that commonplace sentences, as some may touch divers matters, should be wrote under as many titles. He used to say that the advantage of his commonplace was not, as a parson's concordance, to help him to cases, but when he remembered he had read of a case to help him to find it; and then his little note there, brought into his mind the agitation of the matter at large in the book; and, for this reason, the commonplace book is of little to use any but to him that made it. For the law is inculcated by reading the long arguments to be found in the books where reasons are given *pro* and *con*, and not by any extracts however curiously made. And the great art of commonplacing lying in the judicious but very contracted note of the matter, a stranger may pass it by and not know whether it concerns his inquiry or not.

18. His admission into the conversation of Mr. Attorney-General Palmer¹ (whereof the happy consequences are noted afterwards) proved of great use to him in the direction of his reading. For Mr. Attorney (whose good nature and affability was such, that a young gentleman might demand any thing of him that tended to the advancement of his studies; and he would answer fully and friendly to it) was a very great book lawyer and yet never made any commonplace; which is a rare instance and a sign of a great and

¹ Sir Geoffrey Palmer, Attorney-General from June, 1660, till May, 1670.

distinct memory: but yet not so great as some have had, who have been so full of titles of books and folios that their understanding was kept truly under, and they knew nothing else. For this reason old Serjeant Waller was called Index; and people went for his opinion only to bring away a list of quotations to assist other counsel that understood better. I doubt not but his lordship was encouraged by Mr. Attorney to commonplace so much as he did, whereof the want might be sensible to himself that had not done so but, too late perhaps, wished he had done it. And the course and method of study which his lordship used and recommended to his friends was derived from the same fountain. And of that, as far as I have observed from his lordship's discourse, was to use a variety and not to plod on in the same tract too long.

19. There are of law-books institutions of various sorts, and reports of cases now almost innumerable:¹ the latter bear most the controversial law and are read as authority such as may be quoted: and I may say the gross of law lectures lies in them. But to spend weeks and months wholly in them is like horses in a string before a laden waggon. They are indeed a careful sort of reading and chiefly require commonplacing, and that makes the work go on slowly. His lordship therefore used to intermix some institutionary reading with them, as, after a fulness of the reports in a morning, about noon to take a repast in Stamford, Crompton, or the Lord Coke's Pleas of the Crown, and Jurisdiction of Courts, Manwood of the Forest Law, Fitzherbert's *Natura Brevium*; and also to look over some of the antiquarian books, as Britton, Bracton, Fleta, Fortescue, Hengham, the old tenures, *narrationes novæ*, the old *natura brevium*, and the diversity of courts. These at times, for change and refreshment, being books all fit to be known. And those that as to authority are obsoleted, go rounder off-hand because they require little commonplacing and that only as to matter very singular and remarkable, and such as the student fancies he shall desire afterwards to recover. And besides all this, the day

¹ When North wrote, the number of reports certainly did not amount to fifty volumes; they now count by hundreds.

afforded him room for a little history, especially of England, modern books and controversy in print. But now as to the English history, I may add a modern improvement, viz. the two volumes of Dr. Brady's¹ are added to the store, and compiled so religiously upon the very text, letters and syllables of the authorities, especially those upon record, that the work may justly pass for an antiquarian law-book. In this manner he ordered his own studies, but with excursions into humanity and arts beyond what may be suitable to the genius of every young student in the law.

20. And he was most sensible of the benefit of discourse, which I mentioned before ; for I have observed him often say that, after his day's reading (as in London if he had the opportunity) at his night's congress with his friends, either at commons or over a chop, whatever the subject was, he made it the subject of his discourse in the company ; "for," said he, "I read many things which I am sensible I forgot, but I found withal that, if I had once talked over what I had read, I never forgot that." This agrees with a direction to a student, said to have come from the Earl of Nottingham, "that he should study all the morning and talk all the afternoon ;" because a ready speech (if it be not nature's gift) is acquirable only by practice, and is very necessary for a bar-practiser. I remember that, after the fire of the Temple,² it was considered whether the old cloister walks should be rebuilt or rather improved into chambers ; which latter had been for the benefit of the Middle Temple. But in regard it could not be done without the consent of the Inner house, the masters of the Middle house waited upon the then Mr. Attorney Finch, to desire the concurrence of his society upon a proposition of some benefit to be thrown in on that side. But Mr. Attorney would by no means give way to it, and reprov'd the Middle Templars very wittily and

¹ Robert Brady, M.D., Master of Caius College, Cambridge (1660-1700). The works referred to by Roger North are, probably, (i) *An Introduction to Old English History*, 1684 ; and (ii) *An Historical Treatise of Cities and Burghs*, 1690. Both are in folio.

² See the very graphic account of this calamity in *Roger North's Autobiography*, chap. iv.

eloquently upon the subject of students walking in evenings there and putting cases, "which," he said, "was done in his time, as mean and low as the buildings were then, however it comes," said he, "that such a benefit to students is now made so little account of." And thereupon the cloisters, by the order and disposition of Sir Christopher Wren, were built as they now stand. And agreeable to this, Serjeant Maynard, the best old book-lawyer of his time, used to say that the law was "*ars bablativa*," which humoursomely enough declares the advantage that discoursing brings to the students of the law. And certainly, above all things, the art of prompt speaking is to be cultivated as far as may be according to the aptest rules of oratory, because it wonderfully sets off a bar-practiser. And many by that very talent uncultivated and owing to pure nature, have succeeded beyond others much more learned. He had such a relish of the old year-books, that he carried one in his coach to divert his time in travel, and said he chose it before any comedy. A true notion of the use of any thing, however out of the road of common approbation, will administer such a superlative taste.

21. I do not know that his lordship had read over in course all the year-books; but I verily believe he had dispatched the greatest part, and that he began with the book termed Hen. VII. which hath some years in the antecedent reigns. That book he used to say was the most useful or rather necessary for a student to take early into his hand and go through with, because he had observed much of the common law, which had fluctuated before, received a settlement in that time, and from thence as from a copious fountain it hath been derived through other authors to us, and now is in the state of common erudition or maxims of the law. He thought a lawyer could not be well grounded without a knowledge of these ancient reports: for they were compiled by men solemnly authorised and not as now, when every ordinary practiser (to say nothing of the late judges; and even their reports have been most taken when they were practisers) publisheth his reports as he pleaseth; and the bookseller procuring an imprimatur, there is no more to be said. And thus the shelves are loaded with reports; all which to

read, much more to commonplace, is not only labour but hardly possible to be done. And how erroneous and contradictory not only to other books and even in the same cases, but also to themselves in many instances, are most of them! And what student or lawyer ever pretended (ingenuously) to know what was in them all? Or what question can happen that may not be very plausibly argued *pro* and *con* out of them? Or what arguers on either side can now want a case in point (as they value themselves) to conclude with?

22. Thus it is become almost necessary to make a pandect of law, by establishing the authority of single points that are clear, suppressing all the rest; and thereby purge out all inconsistencies, contradictions, and dubitations; which being once done the law learning may have more credit and not be called soft wax. But to return to the year-books, it is obvious what deference ought to be had to them more than to the modern reports; for, passing by the very short and material rendering the sense of the pleaders and of the court, it must be observed that the whole cause as well the special pleadings as the debates of the law thereupon was transacted orally at the bar, and the prothonotaries, *ex officio*, afterwards made up the records in Latin. And the court often condescended to discourse with the serjeants about the discretion of their pleas and the consequences with respect to their clients. And the court did all they could to prevent errors and oversights. And reason good; for else their records must go up to the King's Bench to be canvassed for error, which they did not desire should be. And these transactions faithfully reported was anciently a code of the common law, which the courts deferred very much to and the practisers had by heart. But now the pleadings are all delated in paper and so pass the offices, and the court knows nothing of much the greater part of the business that passeth through it: and when causes, which they call real, come on and require counting and pleading at the bar, it is done for form and unintelligibly; and whatever the serjeant mumbles, it is the paper book that is the text: and the court as little meddles with as minds what is done of that sort at the bar; but the questions

that arise are considered upon the paper book. All the rest of the business of the court is wrangling about process and amendments, whereof the latter had been mostly prevented, if the court (as formerly) had considered the first acts of the cause at the bar when offered by the serjeants. And this way also the skill of pleading lies not in a student's notice for him to gather up together with the law part of the case; but he must read over records and entries, a discipline that would split a brisk gentleman by making a jade of his patience. And really forms are better understood and learned by writing than by reading; for that exercise allows time: which consideration hath made clerkship so recommendable to beginners that most enter the profession of the law that way. It was not moroseness, but reason, that inclined his lordship to deal so much as he did with the year-books; and however at present that sort of reading is obsolete and despised, I guess there will not be found a truly learned, judicious, common lawyer without it.

23. After a good foundation out of books, his lordship together with his farther studies joined an attendance on the courts of justice. For an observation of the practice gave a great life and spirit to what had been gained by reading. His design, with the community of his profession, was to enter his claim to business at the King's Bench bar which inclined him to make his preparatory attendance there; but yet he thought fit, as he had been also advised, to attend as a student most at the Common Pleas: for there all suits are drawn forth upon the ancient and genuine process of the common law; and, as the Lord Nottingham in one of his speeches expresseth, the law is there at home. The time of that court is not taken up with factious contentions, as at the King's Bench where more news than law is stirring. And his lordship, whenever he was in the way of learning any thing never failed to have his note-book, pen and ink ready: and in that he wrote as a reporter and afterwards, generally that very day, he posted his gatherings into a fair book; for then he could supply out of his memory what was imperfectly taken, and recover things that had not been noted and dispose all into some tolerable order: for a young reporter's

note book is so disorderly wrote, or rather scratched that none but himself, nor he after a few days, can make any thing of it.

24. I do not find that he had opinion enough of his early reports taken while he was a student, to preserve them either fair or foul; for none such have come to my hand. But just upon his coming to the bar he attended at the Common Pleas whilst Hales¹ was a judge there. And some cases are found at the beginning of his reports taken there. And I perceive by that book, that one year's reports to Hil. 1657-8, are of the Common Pleas, and from thence they run all as of the King's Bench. By this time he found his strength at that exercise and began to be very careful of his reports. He was also an attendant (as well as exerciser) at the ordinary moots in the Middle Temple and at New Inn; whereof the former is the superior and governs the exercises; and took notes. In those days the moots were carefully performed, and it is hard to give a good reason (bad ones are prompt enough) why they are not so now. And he contrived to stay in London to be present at famous pleadings, as particularly that of Sir Heneage Finch, and some others. The ready use of the law French came easily to him, because he well understood the vernacular; and he had acquired such a dexterity in writing it with the ordinary abbreviations, that he seldom wrote hastily in any other dialect: for, to say truth, barbarous as it is thought to be it is concise, aptly abbreviated, and significative. And I believe his aptness, when in haste or writing to himself only, to write in law French, proceeded from his long use and practice of noting at the bar; which had created in him both an ease and a dexterity in it.² When he had time and place to write at his ease he usually wrote English, and accordingly drew up his reports.

25. His lordship, long before he was called to the bar, undertook the practice of court-keeping. His grandfather thought he preferred him mainly, when he made him

¹ *Hales*. It is thus Roger North always spells Sir Matthew Hale's name.

² Previous to the Revolution, the law reports were taken down and published in French.

steward of his courts. And the young lawyer procured of other neighbours and relations to have the charge of their manors; and so made the employment considerable to him. He did not, as many others of late, take a share of the profits and make some attorney a kind of substitute to do all the business; but kept all his courts himself and wrote all his court rolls and made out his copies with his own hands; for he pretended to no clerk then. His grandfather had a venerable old steward, careful by nature and faithful to his lord, employing all his thoughts and time to manage for supply of his house and upholding his rents: in short, one of a race of human kind heretofore frequent but now utterly extinct; and there is scarce any of the breed left that is affectionate as well as faithful, and diligent for love rather than for self-interest. This old gentleman, with his boot-hose and beard, used to accompany his young master to his court-keeping; and observing him reason the country people out of their pence for essoins, &c., he commended him, saying, "if he could be contented to be a great while getting a little he would be a little while getting a great deal," wherein he was no false prophet. I have heard his lordship say, "he thought this court-keeping business" (which he used to recommend to others) "did him a great deal of service; for it showed him the humours of the country people and accustomed him to talk readily with them and to meet with their subtilties." They seldom came forward without some formed stratagem to be too hard for Mr. Steward. Some would insist to know their fine, which he would not tell till they were admitted and then he insisted for his fees; no, they would know the fine, and some cunning fellow would jog and advise them to pay the fees, and not dispute that. And abundance more of their contrivances he used to speak of.

26. He was most put to it in cases of infancy and uses declared in deeds that did not appear. As for the former, if none came for the infant to be admitted, he seized, not as for a forfeiture but *quousque*, &c., and made a warrant to the bailiff, *quod respondeat domino de proficuis*: which did not, as he said, make the lord accountable who in that respect had a prerogative, as, upon a reversal of an outlawry, no money goes out of the king's coffers; but if any friend

would pay the fine he admitted the infant and him guardian. As to latent uses, which often happen in wills (and sometimes referring to deeds of settlement) for long terms of years, he would not admit at all, and no action lay because he had the lord's order: For though he might fine to the value it did not answer, because at that rate men might enfranchise the copyhold in spite of the lord's teeth. He hath said that the greatest trouble he had in those affairs, was to satisfy some greedy lords, or rather ladies of manors, in setting the fines and in being in some measure an executioner of their cruelty upon poor men. And in very good earnest, it is a miserable thing to observe how sharpers that now are commonly court-keepers pinch the poor copyholders in their fees. Small tenements and pieces of land that have been men's inheritances for divers generations, to say nothing of the fines, are devoured by fees. So that, if it were only to relieve the poorest of the land owners of the nation from such extortions and oppressions without more, there is reason enough to abolish the tenure. It was somewhat unequal, when the Parliament took away the royal tenures *in capite*, that the lesser tenures of the gentry were left exposed to as grievous abuses as the former. The state of that matter seems now at the worst, for copyhold tenures continually waste and cannot be renewed or increased, so that most manors are more than half lost. Either abolish all base tenures or let gentlemen enlarge them as they please; and that perhaps may tend to some repopulation, which is more needed than any means of extortion.

27. His lordship while he was a student and during his incapacity to practise above-board, was contented to underpull, as they call it, and managed divers suits for his country friends and relations, "which," he said, "was useful to him in letting him into a knowledge of the offices and the methods used there;" for he was always in person present at every turn in whatever business he undertook. In a cause for his father against Sir John Lawrence, he recovered £300 and brought in a very moderate bill of charges; which pleased his father who expected a great deal more. He made use of Mr. Baker, a solicitor in Chancery who for his singular integrity was famous, and

on this occasion ought to be remembered with honour. His lordship had a veneration for this Mr. Baker as long as he lived. When his lordship paid his bill, the virtuous solicitor laid by a sum (according to an usual rate) for him, saying that it was their way and they were allowed at the offices somewhat for encouragement to them that brought business. By this we see what country and other attornies get by Chancery suits. But his lordship would not touch a penny but turned it back upon the good man's hands.

28. He also managed a suit for his grandfather with the like success, and in the close of that somewhat comical happening I am provoked to relate it. And indeed what have we to remember of a young man, but things that really fell out and in his circumstances not inconsiderable? After this suit ended, his lordship sent to his grandfather the bitter pill, the solicitor's bill of costs, and the old man sent him the money and he paid it. And afterwards the noble client reviewed his bill over and over, for however moderately and husbandly the cause was managed he thought the sum total a great deal too much for the lawyers. And among other items, he observed great numbers of sheets in the bill and so for the answer and depositions, besides many breviates, orders, &c., as belong to a Chancery case. And he had heard in the country of such bills whereof no entry at all was in the offices (no miracle in our days), and then knowing Frank North to be a nimble spark, he concluded that these items were suppositions and that he had swallowed the money, and after the way of wilful people, upon a bare suspicion concluding a certainty, he deliberated how to catch him (as it were) in the fact and then to expose him to perpetual shame and ruin. And pursuant to this pious resolution, he writes to Mr. Langhorn of the Temple¹ (who afterwards suffered in Oates's plot) to cause searches to be made and to send him word if any such proceedings, of which he gave him the account, were entered in the offices. Whether it was by guess, perfunctory

¹ "He was in all respects," says Burnet, "a very extraordinary man. He was learned and honest in his profession, but was out of measure bigoted in his religion. He died with great constancy." (*Own Times*, vol. ii. p. 810. See his trial, *Howel's State Trials*, vol. vii. p. 418.)

searches, or the person employed took the money and cheated the offices, I know not; but it is certain that Langhorn returned answer, "that no such proceedings were to be found upon the file in any of the offices where they should have been entered, or any copies of such made out." This was nuts to the old lord who thought he had outwitted Frank: and, while he was in London, used to talk very mysteriously of him; as that "Frank had wit enough, but honesty, honesty, was a rare thing." The meaning of all which the family about him did not in the least apprehend. When Frank was about to come down, the old man wrote to him to bring with him the papers that belonged to his case. And so it rested till the young man arrived; and then, for about a week, all was well; in which time, all the news and London matters were talked over and dispatched. And then, after dinner, the old lord turned to Frank, and "Where are the papers?" said he. The other answered, "he would go fetch them." This did not work well but still the event was expected; and after a little pause, Frank returned with a bale of papers under his arm and set it down upon the table, standing by it in expectation of what would be said to him. The old lord, being utterly frustrated in his expectations, turned about the room quicker than ordinary; and as he mended his pace, Frank was in great doubt what was to become of him. At last he ventured to say, "My lord, what is your pleasure I shall do with these papers?" The old lord stopped short, and turning said, "Wipe your —— with them." That answer was not at all expected; and, after a little pause, he asked again "what he should do with them?" And his lordship stopped short again and, twice as loud as before, said he, "Why, don't I tell ye? wipe your —— with them." And there ended all his concern about those papers; and Frank was restored to favour.

29. This historiette manifests the little safety there is in false dealing, as much as the loftier accounts of hazards or decadences of great ministers of the court: for if this young lawyer, for want of experience or (we must say) of honesty, had dabbled in a very common practice of shamming a false bill, he had been caught and undone. And on the other side, being faithful and just with the testi-

mony of things to disculpate him, what a triumph had he over a severe old man that had rejoiced to have exposed him ! And how strongly is the consequence of a very trite maxim (in mouths, but rare in hearts) verified by this instance, that honesty is the best policy ! And there is this farther lesson in it, that young men in making their fortunes must depend, and are obliged to bear with humours and injustices from those they depend on : And in that school of the world they learn to be reasonable and just themselves ; for few men ever value reason and justice till they have sharply felt and so have been made sensible of the contrary.

30. There was an emergence in the family of his lordship's grandfather, which as to the economy of it was of the last importance : and in regard it drew in his lordship to be the chief actor in the scene and, as things then stood, a bold undertaker, and shows him so early thought fit to be employed and intrusted in nice performances, I shall give a relation of it. The old lord, besides his reverend steward mentioned before, had two other servants of a French race who were his favourites. One was called Bertram St. Genes, that had scarce English enough to make himself understood ; but a gross sycophant and (if honest) most unfit for business. He had married the other sister, and had children, for whom a habitation was prepared near hand. He was a very little fellow and served as a *valet de chambre*, and had thereby means to insinuate to the prejudice of the rest of the family. But the other, Monsieur le Blanc, in English (as he was called) White, was a brisk, gay spark, that had been bred at court (such as it was) a page to Sir John Danvers, one of the king's judges. He could dance, sing, and play very neatly on the violin, was good company, and served as a gentleman waiter, and was most acceptable in his musical capacity. It fell out, very unluckily for the family, that the old lord quarrelled with his good steward ; and, as his humour was to be very tyrannical and vindictive, so he had taken a resolution never to be in the wrong. And he cared not whom he persecuted nor how unjustly or unreasonably, if it tended, as he thought to justify any thing he had done : and the more mistaken he found himself the more violent was he in his

proceedings, as if by that means he was to set himself right. These are the dregs of an old courtier. But surely he tormented the poor old man by revilings and law-suits, and at last broke his heart and he died. But upon the first turning him off there was a place fallen, no less than the premier minister in that family; and the question came who should succeed him. Sir Dudley North, his lordship's father, was really afflicted at the hard usage of the old steward; and more at the ruin he foresaw would follow if that rascally monsieur, who was worse than good for nothing, was made steward. There never was an instance of filial duty to a parent more eminent than that of Sir Dudley North to his father. He lived to a good old age before the barony descended upon him, and had stood as an eldest son of a peer at the state in the House of Lords at sixty-three. He never would put on his hat or sit down before his father, unless enjoined to do it. So far was he from moving any thing to him that he knew would displease him, and so egregious was this dutiful demeanour that all people took notice of and admired it. And some were so assured to say, that Sir Dudley had his reward in living to see all his own children, who were not a few male and female, both dutiful to him and settled prosperously according to their several pretensions in the world. But Sir Dudley, dreading the advancement of this Bertram, encouraged his son Frank who seemed a favourite also to represent to the old lord the unfitness of that fellow to be his steward; and he accordingly ventured to say, "he hoped his lordship did not intend to make choice of him." "Why so?" said the old lord; "what can you charge Bertram with?" He answered, "that for many years he had the charge of his wine and strong-beer cellar, and never gave his lordship an account of that or any thing he was intrusted with." This was but too true and could not be denied. Then the old man rearing himself a little, "Who then," said he, "would you have to be steward?" He answered, Mr. White. And that was worse and worse because he was a favourite also; and Frank North's designation of him in that manner could not fairly be quarrelled with. Whereupon the old lord rose up and lapping his cloak about, as he used when angry, without saying more

went out leaving the young man in great suspense not knowing what was to become of him. The old lord went to his cabinet and took out a codicil he had made to his will, and carried it to his son Dudley; and, "Look here, son," said he, "I had given Frank twenty pounds a year, but he has offended me and here is his reward;" so threw it into the fire. And from that time contrived all the ways he could to defame and ruin him. Sir Dudley repaired his son Frank by a lease of a house in London, and encouraged him by his approval of his fidelity and courage. But the old man still made use of Frank for his diversion; and, teeth outwards, was kind to him: but he must sometimes bear a gird or two upon account of the steward, which at last proved to be the monsieur. But he lived not long enough to do much mischief; for a government long kept in good order will not be put out all at once. And, after Frank (at his next term) was gone to London the old lord made a servant write to him, and at the bottom were these words: *In consilium ne accesseris antequam voceris*; that is, do not offer your advice before it is asked. The reason of which was that the bitterness of his repentance might not wear off. This was the last transaction in that family which much concerned his lordship: and if these relations are thought of small import, to mend that fault I can add only that they concern my subject and are true: and, from a private family, let the imagination transfer the scene to some royal and imperial court changing the names of persons and offices and the whole may be seen sprout up into the altitude of state intrigues.

31. I have so far conducted his lordship as to be ready for the bar. But before I touch upon that, I shall take some notice of his character as the same appeared in this first stage of his life. He was of low stature, but had an amiable, ingenuous aspect, and his conversation was answerable being ever agreeable to his company. His hair grew to a considerable length, but was hard and stiff and did not fall as the rest of the family, which made it bush somewhat and not without a mixture of red and grey. As to his humour, he was free from vanity himself and hated it in others. His youthful habits were never gay or topping the mode, like other inns of court gentlemen, but always plain and clean.

and showed somewhat of firmness or solidity beyond his age. His desire was rather not to be seen at all than to be marked by his dress. In those things, to the extreme was his aim; that is, not to be censured for a careless sloven rather than to be commended for being well dressed. But as to his appearing in public, the composition of his temper was extraordinary; for he had wit, learning, and elocution, and knew it and was not sensible of any notable failings whereof to accuse himself; and yet was modest even to a weakness. I believe a more shamefaced creature than he was never came into the world: he could scarce bear the being seen in any public places. I have heard him say that, when he was a student and ate in the Temple hall, if he saw any company there he could not walk in till other company came, behind whom, as he entered, he might be shaded from the view of the rest. And he used to stand dodging at the screen till such opportunity arrived; for it was death to him to walk up alone in open view. This native modesty was a good guard against vice, which is not desperately pursued by young men without a sort of boldness and effrontery in their natures. Therefore ladies, and other fond people, are greatly mistaken when they desire that boys should have the garb of men and usurp assurance in the province of shamefacedness. Bashfulness in the one hath the effect of judgment in the other. And where judgment, as in youth is commonly wanted, if there be not modesty what guard has poor nature against the incentives of vice? Therefore it is an happy disposition; for when bashfulness wears off judgment comes on: and by judgment I mean a real experience of things, that enables a man to choose for himself and in so doing to determine wisely.

32. His loose entertainments in this stage were, as usual with gentlemen cadets of noble families in the country, sporting on horseback; for which there was opportunity enough at his grandfather's house [at Kirtling], where was a very large and well-stocked deer park; and at least twice a week in the season there was killing of deer. The method then was for the keeper with a large cross bow and arrow to wound the deer, and two or three disciplined park hounds pursued till he dropped. There was most of the country sports used there for diverting a large family,

as setting, coursing, bowling ; and he was in it all ; and, within doors, back-gammon and cards with his fraternity and others : wherein his parts did not fail him for he was an expert gamester. He used to please himself with rail-lery, as he found any that by minority of age or majority of folly and self-conceit were exposed to be so practised upon. I could give instances enough of this sort and not unpleasant, if such trifles were to be indulged in a design such as mine is. His most solemn entertainment was music, in which he was not only master but doctor. This for the country ; where, to make good his exhibition, he was contented (though in truth forced) to pass the greater part of his time. But in town, he had his select of friends and acquaintance ; and with them he passed his time merrily and profitably for he was as brisk at every diversion as the best. Even after his purse flowed sufficiently a petit supper and a bottle always pleased him. But he fell into no course of excess or vice ; and whenever he was a little overtaken it was a warning to him to take better care afterwards : and against women his modesty was an effectual guard, though he was as much inclined as any man which made him desirous to marry. And that made his continence a positive virtue ; for who may not be good that is not inclined to evil ? The virtue of goodness is where a contrary inclination is strove with and conquered. He was in town a noted hunter of music meetings ; and very often the fancy prevailed to go about town and see trades work ; which is a very diverting and instructive entertainment. There was not anything extraordinary which he did not, if he might visit, for his information as well as diversion ; as engines, shows, lectures, and even so low as to hear Hugh Peters preach. I have heard him say, that when Hugh had made his close, he told his congregation that a gifted brother had a desire to hold forth ; and then up rose Sir Peter Pet :¹ and he, though a mere layman, prayed and preached his turn out. That gentleman lived to be an old man in town ; and most people knew him that little thought

¹ Sir Peter Pett was one of the founders of the Royal Society ; Fellow of All Souls ; author of *A Discourse Concerning Liberty of Conscience* (8vo., 1661). See *Wood, Ath. Oxon. (Blisse)*, vol. iv. 576, and *Register of the Visitors of the University of Oxford (Camden Society, 1881)*.

he had been once a preacher. The old Lord and Lady Anglesey (while she lived) supported him ; and at the revolution Sir Peter and his lordship published books, wherein one of the chief performances lay in the commending each other : which notable band of friendship had its root in the time of the Irish rebellion.

33. Now, being to leave his lordship in this stage invested with a title and beginning to practise the law,¹ I must observe his preparatives. He was not called to the bar *ex gratiâ*, or for favour, as when the person is not of standing or hath not performed his exercises : but being early admitted, his time was fully run out and he performed all his moots² both in the inns of Chancery (for it is the custom for the inns of court to send down readers, to moot in the inns dependent on them) and also in the hall ; and not perfunctorily, as of latter times the use is by way of *opus operatum*, as for tale and not for weight, but in well-studied arguments wherein he followed the example, it may be the instruction, of his friend and patron Sir Jeffry Palmer, whose moots are excellent readings, as the original manuscripts resting in my custody may show : and I have also some like testimonies of his lordship's endeavours that same way. I have heard him say that it is prudent not over-soon to launch into practice ;³ for it is observed that no person increaseth his store of law after

¹ It appears from the books of the Middle Temple, that the Lord Keeper was called to the bar on the 28th June, 1661.

² The mode of performing the moots is thus described by Dugdale. "The pleadings are first recited by the students, then the case heard and argued by the barristers ; and lastly by the reader elect and benchers, who all three argue in English ; but the pleadings are recited, and the case argued by the utter barristers, in law French. The moot being ended, all parties return to the cupboard, where the mootmen present the benchers with a cup of beer and a slice of bread." (*Orig. Jurid.* p. 209.) The custom of *mooting* has been discontinued for upwards of a century.

³ By an order of the lord chancellor and the twelve judges, dated 18th June, 1664, no one was to be admitted to the bar, unless he had kept exercises in some inn of court for *seven* years ; and after being called, he was not to practice publicly in court until he had been called three years : thus making the term of probation ten years. "For that the over early and hasty practice of utter barristers doth make them the less grounded and sufficient, whereby the law may be disgraced and the client prejudiced." (*Dugdale's Orig. Jurid.* p. 323.)

he is called to the bar and enters upon practice. His judgment and knowledge of forms may increase but his book learning is at a stay, because business, either found or pursued, fills his head; so that even reading doth him little good. Wherefore it is said, that he who is not a good lawyer before he comes to the bar will never be a good one after it. After he was called to the bar (which, as they term it, was *ex debito justitiæ*) he did not, as many less qualified have done, bustle about town and obtrude themselves upon attorneys and perhaps bargain for business; but lay quiet: and the chief alteration in his way of appearing was this. Instead of his being posted within the court as a student to take notes, he did the same standing at the bar; and if chance or a friend brought a motion, of course it was welcome.

34. The exhibition allowed his lordship by his father, was at first sixty pounds per annum:¹ but the family being hard pinched for supplies towards educating and disposing many younger children, and his parents observing him to pick up some pence by court-keeping besides an allowance of twenty pounds per annum from his grandfather and a little by practice, they thought fit to reduce him to fifty pounds. This sat hard upon his spirits and produced divers notable-penned letters, post after post, complaining upon all the topics of an hard case that could be thought of. He never pleaded so earnestly for the best fee that ever he had. At length there comes a letter from his father, which he opened with precipitous haste in hopes of a favourable answer; and there he found,—“Frank, I suppose by this time having vented all your discontent you are satisfied with what I have done, &c.” There sunk all his hopes upon that point. But, to do right to his good father, he paid him that fifty pounds a year as long as he lived, saying he would not discourage industry by rewarding it, when successful, with loss.

35. One of his lordship's first clients, and for whom he had a great respect because he had the office of keeping his courts early, was Mr. Stutvile of Dalham near New-

¹ The sum allowed Jeffries when a student was still less, being £40 and £10 for clothes. (*Lives of the Chancellors*, vol. i. p. 179.)

market. This gentleman was a compound of irregularity and one of his feats had like to have cost him dear; for he was taken napping with the wife of one Robinson: on which death, without honourable satisfaction, was to follow. The giving the law satisfaction, that is money, was the milder dose of the two; and that must be a peremptory bond for the payment of fifteen hundred pounds on which condition the bond was to be void. This bond was made by a scrivener and very well; though at the close of the condition the words "else to remain in full force" were not added. After the sealing, Mr. Robinson brought his bond to the scrivener and swore to be the death of him if he did not mend it, by adding these words. "Here is a condition," said he, "to make the bond void but none to make it good." "It is good," said the scrivener, "if there be no words to avoid it; and I may spoil, but cannot mend the bond." That was all one, he must do it and did it. And then the scrivener honestly told the obliger what he had been forced to; so that was laid up for a plea to avoid the bond. But Mr. Robinson, advising with counsel about suing, was told his bond was utterly voided by his adding words to the condition after sealing. Then he was advised not to put it to suit till the scrivener was dead. His lordship and other of Mr. Stutvile's counsel perceiving that, contrived to bring the point soon to a trial, by preferring an information in the King's Bench against Robinson for forgery; and if, upon the scrivener's testimony, he should be convicted, that record would remain against the bond for ever. Robinson, finding himself caught and no remedy, complied by delivering up the bond and so got rid of the information. But this unexpected success made such an impression on Stutvile's wild brains, that he thought there could be no law-suit desperate; and from that time he never did any man justice, but ruined himself by perverse law-suits and at last died in a gaol. Perhaps if he had paid the fifteen hundred pounds his punishment had been less.

36. After his lordship was called to the bar, the first thing he took care for was a practising chamber, as they call those which are not above two pair of stairs high. The ground chamber is not so well esteemed as one pair of

stairs, but yet better than two ; and the price is accordingly. He sold his little student's chamber and also the lease of a house his father gave him, which raised near three hundred pounds ; and, with that sum, he bought his life in a corner chamber one pair of stairs in Elm Court. A dismal hole for the price ; for it was not only dark next the court but, on the back side, a high building of the Inner Temple stood within five or six yards of his windows : But yet some more room and a large study being gained he thought himself greatly preferred : and he soon filled his shelves with all the useful books of the law which he wanted. His mother had made a collection of legacies and gifts to him when very young ; and, when he first went to the inns of court, she gave him an exact account to the time cast up with the interest, and paid him the sum total at once ; and with that stock he made out a good student's library.

37. About this time, his brother Dudley, who had lived in London divers years in the several states of preparation for trading as a Turkey merchant, was sent abroad by his master in a long round-about voyage by Archangel in Russia to Smyrna ; an account of which voyage will be found in the relation of that gentleman's life. He had, at his going out, from his father but a single hundred pound stock to trade with ; and his lordship augmented it by lending him two hundred pounds, which was all the wealth he could value himself upon, beforehand ; and of that, by the voyage and mortality, he ran no small risk. This was a melancholy parting ; for they had been bred and much conversant together, and, fraternal relation apart, were joined in the strictest personal friendship ; and now when they were arrived to a state of enjoying each other in perfection, worldly engagements obliged them to separate. But this kindness of his lordship's was rewarded by living to see his brother come home wealthy and, soon after, flourishing not only in the city but also at court in the king's service.

38. These two brothers and friends held a continual correspondence by letters ; but more frequent and expatiated at first than afterwards, when business increased so much upon both as abated the ardour of writing often and

long. It fell out that when Mr. Dudley North first arrived at Smyrna, or soon after, the factory was served by one Broadgate as their chaplain, sent out for that end by the Turkey Company.¹ He had been a fellow of St. John's college in Cambridge and preferred to a living in Essex, where the gentleman there residing was so offended at his unfitness and ill carriage that, to get rid of him, he made an interest and palmed him upon the Turkey Company, and so he came to be sent to Smyrna. The young factors are commonly generous fellows and stand much upon honour (in those parts at least, whatever they prove when they come home): they revere and gratify their pappas, as they call him, if he behave himself well but, if otherwise, they lead him a life (as they say) like a dog. This person was a presbyterian bigot and not without a flaw in his cranium. And he made account that he was to preside over boys and to teach them religion: and to that end had framed a catechism and got it printed; and a bale of these stitched in blue paper went along with him, and were delivered out to all the factory; and he took particular notice of Mr. Dudley North, telling him that his brother Francis was his fellow collegiate and intimate friend and, for his sake, he would be very kind to him. But the parson was guilty of so many barbarous impertinences (as may be found particularised in that gentleman's life) that the young factor wrote to his brother Francis, telling the various extravagancies and follies committed by him there, and desiring to have an account of him and his character. His lordship soon wrote and informed him that Broadgate was the laughing-stock of the college; and so made good payment in stories of him here. This letter was communicated about in the factory and the parson understood how he came to be so derided as he was. Upon that, he goes to Mr. Dudley North and desired to have his brother's letter, that he might sue him in England for taking away his reputation. The merchant would not do that, but told the parson that, if he had it, it would do him no service for he would prove that he had no reputation before the letter came, so could lose none by that: and then, turning

¹ See *Life of Sir Dudley North*, § 90.

over his copy-book of letters, he read to him his leading letter to his brother, in which were all the stories and terms of derision as could be to make him contemptible. This was plain enough to the parson; and it was all he got by his attempt. This was one of those notable men that obliged the little fellow-commoner of St. John's college with opportunities of making ridiculous remarks. As, for instance, that he spent his time watching at his window; and if he saw strangers in the court, then he made his clock strike that it might be plain to them that a clock struck in his chamber. And, if many scholars were in the court, he went down on purpose to make them cap him. And the book, that lay on his table, had broad pieces in the leaves which visitants, opening, might discover; and other such kind of vain follies whereof the early observation might possibly help to make his lordship nauseate all kind of vanity, as he did for ever after.

39. The loss of this good brother was, in some measure, repaired by the frequent enjoyment of another, John North, who had also for some years been bred with him; but, being settled in another way of study in the university of Cambridge, they came not often together but at friends' houses in times of recess and, sometimes, by recourse of the scholar to London. And their endearments increased continually ending in a perfect and untainted love and friendship to each other: of which more may be said in the life of this brother John, afterwards Dr. North.

40. About this time his lordship, notwithstanding his being called to the bar, followed his studies very close and attended the courts at Westminster and reported diligently; and if there were any famed cause to be argued and determined, in what court soever it was, he would be a present auditor and reporter of it; especially before Hales while he sat in the Common Pleas. And, obliging himself to that spider-kind of life which a young lawyer leads in his chamber, he began to contract certain splenetic reflections touching his health, always thinking some fever, consumption, or other disease creeping upon him, and inclined much to physic for prevention. Once he repaired to Dr. Bokenham, of Bury, with a list of complaints. But the doctor could find no ground for any of them nor to suspect

him ill; but laughed at him and sent him away. This correction assuaged the spleen a little; but he was not cured till a deluge of business drowned all such kind of thoughts. But he had one symptom which often alarmed him, which was much spitting; but in truth it was a benefit of nature; for it was plain that a noxious phlegm discharged itself in that way; for while his spitting continued he was always well, but if that stopped he was as surely ill. He was all his life solicitous about his health and fearful of getting cold, for which end he went thick clad and wore a broad stomacher on his breast; and commonly a little leather cap, which sort was then called skullcaps; but those devolved to other uses I shall mention afterwards.

41. Soon after his being called to the bar, he began to feel himself in business and, as a fresh young man of good character, had the favour of divers persons that out of a good will went to him, and some near relations. He was once asked if he took fees of such. "Yes," said he; "they come to do me a kindness; and what kindness have I if I refuse their money?" The attornies also were very civil to him and brought him motions, which gave him opportunity of showing himself; and these obligations he remembered to the last, and returned them when it came to his turn to oblige with any just favour he could show: and he never failed to do it. His acquaintance was so diffused through the whole relation and dependence of Sir Jeffry Palmer, that he had them all entirely, and indeed, as well before as after he was called to the bar, he lived as one almost ingrafted in the family; and not only his interest was greatly derived from thence but his conversation was almost confined to them; and they were all so easy and friendly to each other, that they lived and conversed as if they had been literally of a family. His wheel of good fortune turned upon the favour of Mr. Attorney Palmer, whereon the crisis of his preferments in the law moved. But before I come to set forth the history of that and enlarge farther upon his lordship's better fortunes, I will dispatch one or two of his most sensible griefs.

42. The first was the loss of a sister, named Mary, who was married to Sir William Spring, in Suffolk, and

died¹ not long after the birth of her first child, and the child not long after her. He had a particular engagement of friendship and brotherly love to that lady who, besides the advantage of her person, had a superior wit, prodigious memory, and was most agreeable in conversation. I do just remember so much of her (for I was very young when she married) that, for hours and hours together, she diverted her sisters and all the female society at work together (as the use of that family was) with rehearsing by heart prolix romances, with the substance of speeches and letters as well as passages; and this with little or no hesitation but in a continual series of discourse: the very memory of which is to me, at this day, very wonderful. She instituted a sort of order of the wits of her time and acquaintance, whereof the symbol was a sun with a circle touching the rays and, upon that in a blue ground were wrote *αὐράκης* in the proper Greek characters, which her father suggested. Divers of these were made in silver and enamel, but in embroidery plenty, which were dispersed to those wittified ladies who were willing to come into the order; and for a while they were formally worn, till the foundress fell under the government of another and then it was left off.

43. Next to this, the loss of his lordship's bosom friend Mr. Edward Palmer, Mr. Attorney Palmer's younger son, afflicted him. I have heard him say he never was so sensible of a passion of grief as upon his death; and for a long time after he eased himself often upon the impotence of crying. For besides the living amity between them in that moment lost, he was present, embraced and held him in his arms when he died; than which nothing could more aggravate his sorrow. This friendship began by mess-making in the Temple hall and brought his lordship into other beneficial acquaintance, as of the Hydes,² then related to

¹ 23 Oct., 1662.

² Sir Edward Hyde, afterwards Earl of Clarendon, was entrusted with the great seal 29 Jan., 1658. He held it till 3 Aug., 1667.

Sir Nicholas Hyde, unele of the great Earl of Clarendon, was made Chief Justice of the King's Bench 5 Feb., 1627. He died 25 Aug., 1631.

Edward Hyde, third son of the Earl of Clarendon, died young and unmarried. He is the "younger son" alluded to by Roger North.

the greatest employments in the law: one of that name, whose younger son was of the Middle Temple, had the great seal as lord chancellor, and another was lord chief justice of the King's Bench; and this acquaintance owned his lordship for a relation, and was cultivated by him with all the application he could make. But this Mr. Palmer first brought his lordship to the attorney-general's knowledge and familiarity, and the very great benefits to him thereby. For he not only had his direction and assistance as well as encouragement in his studies, but was by him, as it were, led by the hand into the highway of preferment. For that great and sudden increase of his lordship's practice, which I mentioned before, may not be entirely ascribed to capacity. It is more than probable that in process of time he had advanced himself by the pure strength of his genius, but not by such large strides as he made in getting money and loping into preferments, as he did, without the aid of friends and good fortune; for circumstances of persons and times were most propitious to his character. And of those happy contingents the first was this friendship of Sir Jeoffry Palmer, which conduced much to the lustre of his lordship's reputation.

44. And therein the attorney-general did no less serve himself; for he made use of his cousin North (as he most kindly used to style him) in being personated by him in Westminster hall, and otherwise by his consults upon motions of law depending: for, at the latter end of his time, he grew very infirm and weak and when he could not attend in the court of King's Bench to give accounts and answers to the court in the king's affairs, as belonged to his office, he directed his lordship with instructions to do it for him, and he acquitted himself therein with such decent modesty, as well as neat and concise speaking, as got him no little credit. Mr. Jones¹ at the bar, who had the capital practice of that court, was much disturbed at the advances this young gentleman made so near his territory, and could not forbear flirting at him, as—"Come, Mr. Deputy

¹ Sir William Jones. He was made Solicitor-General at the same time that Sir Francis North was made Attorney-General, 12 Nov., 1673. In the *Examiner*, p. 507, a long account of Sir William Jones may be found.

Attorney, what have you to say now? You are to be of the king's counsel shortly;" and the like; which showed a spirit of ambition and envy, and was an occasion of some inconvenience to his lordship, as will be showed elsewhere. I have heard his lordship say, that once, at the desire of the attorney-general, he had consulted books and gathered together upon a paper the reasons of law upon a case he (the attorney) was to argue; and that he used that very paper and argued almost word for word out of it. And I have such a paper wrote by his lordship, with some notes of the attorney's hand in the margin. But his lordship said he never mentioned it to any of his family, but to me only, lest they should think him vain and fictitious.

45. Another singular opportunity, by means of the attorney, he had of showing himself; which was the arguing in the House of Lords upon a writ of error for the King against Hollis, &c. The story of the five members in King Charles the First's time is well known, who being prosecuted for the riot committed in the House of Commons, in holding the speaker down in his chair, were convicted. After the restoration, the commons thought that the record of this conviction might be prejudicial to the privilege of that house, and ordered a writ of error to be brought, and Mr. Attorney was to find counsel to argue for the King against the Lord Hollis,¹ who was one of the five and first named in the record. Mr. Attorney being an assistant in the House of Lords, could not argue nor could he prevail upon any of the serjeants or other eminent practisers to do it; for they said it was against the commons of England and they dare not undertake it. At last the attorney said his cousin North should do it; and accordingly at different times, as his other practice would allow him, he prepared his argument which was performed at the bar of the house and (with especial notice taken of his comely youth, and modest but cogent reasoning) his argument was approved, and although the commons carried the cause, he was immediately thereupon made of the king's counsel, which gave him the privilege of pre-audience and coming within the

¹ He had been created Baron Hollis, 22 March, 1660. (*Evelyn's Diary.*)

bar. This action and its consequence had the effect of a trumpet to his fame, for the king had no counsel at law then except serjeants. But I shall beg leave to enlarge a little upon this matter with some farther circumstances, which I am encouraged to do by a paper I found in which his lordship had noted his several steps of preferment, with intent at leisure to have drawn them into a relation of short history. He had made preparatives such as these concerning public matters; but he never had time to pursue them: all or most of which I shall insert in their proper places throughout this work, and annex what occurs to me that may appertain to them. But as to the case before us, his lordship's note is as follows:—

“How king's counsel,—Hollis.”

46. This case of Hollis and other the five members, and his lordship's undertaking to argue for the king, was at a time when his hands were full of business and he was very much straitened in his preparations; and he came up with the greatest reluctance, and nothing but a right reasoned resolution could have conquered his modesty. But that which gave him most assurance was, that he was satisfied he argued on the right side and that, upon the face of the record, the law was for the king. The information (among other things) was for a violent holding the speaker in the chair, in breach of the peace. Hollis pleaded the privilege of the Commons, that all offences committed in the house by the members were punishable only by the house itself: and the attorney-general demurs and the court of King's Bench gave judgment for the king, and this was the (chief) error. His lordship insisted that, 1. This was an offence against the peace with the aggravations, for it was so admitted by the plea; and 2. That if the house had punished it and it had been so pleaded, it had been well; but 3. Their not punishing left the offence at large which ought to be punished somewhere: and the authorities cited were clear that privilege did not extend to offences against the peace, and that such might be punished out of parliament and future parliaments could take no notice of them. This was the chief point, but there were in the case divers other chicaneries, as would appear in the argument itself if made public. The Duke of York was pleased to

inquire who that young gentleman was who had argued so well ; and Mr. Thomas Gray, who attended as a lord's eldest son, told the duke that he was a younger son of the Lord North, and what hopes he gave of his being a very able lawyer, and what was rare at that time, of loyal principles ; and moved his royal highness to prevail with his majesty to encourage him by making him one of his majesty's counsel. And all this was only as the occasion offered, without any suit or contrivance on his lordship's part, to bring it about. His lordship feared that the Lord Keeper Bridgman, who by his place superintends the preferments in the law, might take it ill that his lordship did not move by him : therefore he waited upon him and gave him an account how it succeeded. And the lord keeper having knowledge of the matter beforehand, acquitted his lordship of all blame towards him, and wishing him much joy gave him all the encouragement that could have been wished for or expected.

47. Upon his lordship's being made of the king's counsel, there happened a dispute in his society of the Middle Temple ; which ended favourably to him and augmented his reputation in Westminster Hall. The rulers of the society, called Benchers, refused to call his lordship after he was king's counsel up to the bench ; alleging that if young men by favour so preferred came up straight to the bench, and by their precedence topped the rest of the ancient benchers, it might in time destroy the government of the society. Hereupon his lordship forbore coming into Westminster Hall for some short time hoping they would be better advised, but they persisting, he waited upon the several chiefs and with modesty enough acquainted them of the matter and that, as to himself, he could submit to anything ; but as he had the honour to be his majesty's servant he thought the slight was upon the king, and he esteemed it his duty to acquaint their lordships with it and to receive their directions how he ought to behave himself, and that he should act as they were pleased to prescribe. They all wished him to go and mind his business and leave this matter to them, or to that effect. The very next day in Westminster Hall, when any of the benchers appeared at the courts, they received reprimands from the judges

for their insolence, as if a person whom his majesty had thought fit to make one of his counsel extraordinary was not worthy to come into their company ; and so dismissed them unheard with declaration that until they had done their duty in calling Mr. North to their bench, they must not expect to be heard as counsel in his majesty's courts. This was English, and that evening they conformed and so were reinstated.¹ It is one of the properties of an aristocracy to hate that any persons should come amongst them but of their own choosing. I have heard that, since the revolution, whereby (as they termed it) they were manumised, they have not called any of the king's counsel extraordinary (who are now become numerous) to the bench ; which shows the different walks some matters will take in different times.

48. I have already mentioned his lordship's happy acquaintance with Mr. Edward Palmer, the attorney-general's younger son, which was the rise of all the favour and approbation Mr. Attorney showed him ; and that, the rise of his lordship's succeeding course of preferments. And how helpful and assistant he was to the attorney in his declension : and the repute gained thereby, with the emulation of Sir William Jones that happened thereupon hath been already set forth in the Examen. I should here have thought it reasonable to have given some account of that worthy person on whom his lordship's fortunes so much depended : but since I have said so much of him in the Examen, I think there is no need of insisting any farther upon his character here ;² and therefore shall only relate the following remarkable story. He had married a lady who was a Roman Catholic, upon terms not to meddle with each other's religion but each to enjoy their several church professions without any mention to the contrary ; and both kept parole religiously ; and yet, by dint of his egregious piety and integrity without any other arguments or eloquence, he converted her to the communion of the church of England ; and it fell out thus. One Sunday morning his lady would rise with him which she had used not to do, and

¹ The lord keeper was called to the bench of the Middle Temple on the 5th June, 1668. (*Books of the Society*.)

² See *Examen*, p. 510, *et seq.*

he told her she need not for her church began later, and asked, "why she would rise so soon?" She answered, "to go to church with him;" and so she did and continued so doing all the rest of her life. And to some of her family she declared, that she found his knowledge so great and his course of life so truly pious and virtuous that she concluded that he must needs be in the right, and that she would submit her judgment to his rather than to any other human authority upon earth. This was the good man that embraced his lordship as if he had been his child; and, loving his company, received him into familiarity of discourse, conferences, mutual intercourse of affairs, and reciprocal acts of good will and friendship, as if even before he was king's counsel he had been a co-attorney-general. And he was not only the great cause of his lordship's proficiency and sudden rising in the law, but his mere acquaintance and favour may be justly accounted one of his lordship's capital preferments.

49. These opportunities may be esteemed, as they really were, most benign to the credit of a young counsel, yet the virtue intrinsically moved from his own capacity, for without some transcendancy on that side the effect had been reversed and proved loss rather than gain of reputation. There were some more such accidents which augmented his lordship's esteem in the law; which I shall touch upon, but first mention his going the circuit to which they properly belong. And here I am to show what great application and industry he used in that branch of his practice, which in a few years raised him to the post (as they call it) of cock of the circuit, which supposeth him (as truly he was) a counsel of one side or other in every cause of value to be tried. His lordship stayed not long after he was called to the bar before he took upon him to go circuits. His choice was that styled of Norfolk where he was best known, and that by employments and performances as well as family and acquaintances. He resolved to go through, although the first counties, as Bucks, Bedfordshire, Huntingdonshire, and Cambridgeshire, are very sterile to a beginner, and no young man at his first entrance into practice can expect much business under the service of an apprenticeship and succession to those who have the posses-

sion, till they fall away. But his resolution was to persevere, knowing success in circuit business to be a cardinal ingredient in a lawyer's good fortune. And he ordered the matter so that, whether he had much or little to do, he did not lose his time ; for he was a diligent noter of every passage that was in the court or elsewhere in the law new, or he thought material. And he made himself judge so far, that if a good sentence came from the mouth of an indifferent judge or even of the counsel, he noted it, and whatever the best judge might say if it did not agree with his reason he took no notice of it. So bees gather honey from all sorts of flowers. He was exceeding careful to keep fair with the cocks of the circuit, and particularly Serjeant Earl,¹ who had almost a monopoly. The serjeant was a very covetous man and when none would starve with him in journeys this young gentleman kept him company. Once at Cambridge, the serjeant's man brought his lordship a cake, telling him, "he would want it, for he knew his master would not draw bit till he came to Norwich." And it proved so. They jogged on, and at Barton Mills his lordship asked the serjeant if he would not take a mouthful there. "No, boy," said he, "we'll light at every ten miles end and get to Norwich as soon as we can." And there was no remedy. Once he asked the serjeant in what method he kept his accounts ; "for you have," said he, "lands, securities, and great comings-in of all kinds?" "Accounts, boy?" said he, "I get as much as I can and I spend as little as I can ; and there is all the account I keep." But his lordship was sure to keep the serjeant's discourse flowing all the way they rode ; for being mostly of law and tricks, and sometimes of purchases, management, and the like, it was very beneficial to one who had his experience to gather : and all he received from others he made his own. And in the court, if he was concerned as counsel, he stood in great awe of the chief practisers ; for they having the conduct of the cause, take it ill if a young man blurts out any thing though possibly to the purpose

¹ Erasmus Earl, made serjeant by Cromwell, 12th October, 1648, and again called to that degree after the Restoration, 22nd June, 1660. There are some notices of him in Blomefield's *Norfolk*.

because it seems to top them; and sometimes, if it doth not take with the court, throw up, saying, "the cause was given away," which almost blasts a young man. Therefore, when he thought he had a significant point to offer, he first acquainted the foreman with it which was commonly well taken: and he in return would say, "Move it yourself," and then he seconded it. These discretions respecting the counsel did him great service; and I have more to remember anon, that respect the judge.

50. But first, I shall remember some of the advantages which brought his lordship so soon into circuit business. One of which was his being put into the commission pursuant to the act of parliament for dividing the great level of the fens; and which conduced much to his lordship's fame. And that was done to the intent his lordship should take the chair, and direct in the execution of it. When this commission first met and he was put in the chair, he observed that they had no copy of the act before them but only that which was printed for common use, and he did not think that sufficient, for it was but a private act of which the judges did not *ex officio* take notice, and there might be errors of the press: and accordingly he took care to have an authentic copy examined by the record itself. After that he proposed to the commissioners such apt methods for their proceedings in that commission, that the gentlemen were extremely pleased: for they were satisfied that all he proposed would be for the ease of the commissioners and of the country, and also conducive to an equal distribution of justice to particular persons, who for their interests appeared before them. And these methods being so fairly and ingenuously displayed at the first, the gentlemen of the commission admired the invention and dexterity of one so young, and accordingly agreed to every thing he proposed. And afterwards through the whole course of that commission, he had the authority of a judge amongst them and was seldom interrupted or opposed in any thing he dictated to them; for they saw plainly he had both skill and will to do right in every thing. And the country people seeing him rule the roast (as they say) there, took him for the judge in earnest. And if any of them had a case to come before the commissioners, of which there was

like to be any doubt or contest, they would if possible come along with a client to him at the assizes (of which practice I reserve to speak afterwards), and there bow and cringe that they might be known again at the commission. Thus every opportunity of transacting put into the hands of a person capable of doing well proves an ingredient of fame, which in professions precarious and competitory as the law is, perpetually and in a geometrical proportion (to use the allusion) enlarges the sphere of his practice; and with those that are incapable, or do not acquit themselves well, it hath the contrary effect.

51. Another employ fell to his lordship's share which did him credit, and consequently augmented his business in the country: and that was his being made judge of the royal franchise of Ely. He was constituted by Dr. Lane, then bishop. He succeeded Wren, one of whose sons, Mr. William Wren, was high bailiff of the liberty, and took the seat of an high sheriff; and so the judge, with all the titles of a judge of assize. This was the first bench of justice (if the commission is not accounted one) that his lordship sat on; and to say truth is a very excellent judge school: for there all sorts of law business come before him, arrests, attachments, demurrers, pleadings, issues, and trials, and all that chicane in Westminster Hall, the difference lying chiefly in greater and less. Divers of the circuit counsel and neighbouring attorneys have business and attend there. The worst of the court is, that the pleadings are *de horâ in horam*; and the records are kept by papers filed, and not (as I know) ever made up into rolls. It is so in the court of the county palatine of Durham. But those and even the ordinary court of assizes, as to the fairness and regularity of the plea rolls, must yield to that of Lancaster; and the curiosity there is (or was) such that the prisoners were arraigned upou the roll and not upon the bill found, and the whole proceeding to judgment and execution was also entered up, and not kept in minute books as at the assizes, which is exceeding commendable in the prothonotary and his clerks there. But as to the Isle of Ely, whether, since that time I write of (in which the sessions have been neglected and new discouragements continually growing) the court hath not

so well answered the attendance of a judge as it did then, I cannot say.

52. His lordship found the ways of the attorneys in their practice very loose; and scarce any of them could be positive what the rules of the court were; but, upon any doubt, some said one thing and some another: and the business was done in a huddle almost by word of mouth, there being nothing but a paper upon the file in order for a trial. His lordship endeavoured to regulate all these disorders, making a beginning in the method which he afterwards pursued in all his judicial places; that is first, by informing himself as well as he could what were the rules, and then by slow steps, one thing after another making alterations for the better. But one thing happened which his lordship, with no ordinary exactness of skill in the law, carried through. A suit was commenced in the court of Common Pleas at Westminster for a cause which arose in the royal franchise of Ely. The bishop expected that his judge should see right done to his franchise, which might be hurt if such precedents were let pass. And his lordship thereupon took care that due authorities regarding this particular case should be signed and executed by the bishop, directed to him, requiring him to repair to the court of Common Pleas, and for him and in his name to demand of the court the cognizance of that cause then depending in the court. And his lordship went to the bar, and as bailiff of the bishop made his demand in due form. And the court, who are hardly enough brought to oust themselves of any jurisdiction, scrutinated all points of form and, finding nothing amiss in the demand granted the cognizance, and the cause was removed from that court to the court of the franchise. I know no footsteps for many years before or at any time since of any such demand made or allowed. But the law was plain, and the forms being out of the common road, not without great care, foresight and skill to be pursued, and strict exception and cavil to be expected, the case required such a counsel as his lordship was to prevail in it. I had this matter from his lordship's own mouth; but finding no papers concerning it I cannot point to the time when the transaction was.

53. There was another opportunity fell in his way as propitious as he could have wished, not only for fame but for learning ; and that was a formal iter or justice-seat of the forests that was ordered and proclaimed, and judges were appointed to assist the lord chief justice in eyre, the then Earl of Oxford ; and counsel for the king were also declared ; and they were, Serjeant Maynard, his lordship and who else I do not remember. These went all out together and passed from place to place ; and the judges were solemnly received by the countries as in a circuit ; and thus all the greater part of the forests on this side Trent were visited. The counsel for the king, in all causes in which the king's title was not in question, had liberty to advise and plead ; so good money, besides a gratuity and riding charges, was picked up. But it is not readily conceived what advantage here was by gaining an idea of the ancient law in the immediate practice of it. For the court of the forest is in nature of an iter ; and the justices proceed as anciently the justices in eyre did, by presentments, claims, seizures, replevins, &c., very unlike the ordinary processes of the common law in courts of pleas. It is true that the commissions of oyer and terminer and gaol delivery are eyre also, but restrained to personal crimes. Here it is of rights and those after a peculiar law of forests, as privileges, franchises, grants, customs, purprestures, and offices of divers authorities and jurisdictions ; whereof the learning would cost a student much time and pains, besides going out of the way of his more beneficial studies to acquire. And here the whole time of the several sessions being taken up with the transaction of causes of this nature, the judges well skilled in the old crown law and the prerogative and no person more deeply learned than Serjeant Maynard, who though a counsel was also an assistant to the court, one who had the opportunity of attending much more an employment in these courts, as his lordship had, must needs perfect himself in the general knowledge of the forest law and the jurisdiction of the lord chief justice in eyre. This was an opportunity that rarely happens ; many reigns pass before there is another ; for it is a great charge to the crown in salaries, expenses, and rewards ; and the profits redounded to the lord chief

justice in eyre. And it was said at that time, that the king's intent in ordaining a sessions of eyre was purely to gratify the Earl of Oxford who was one that ever wanted royal boons. But, as to his lordship and his advantages, besides the credit of such an employ which was great, this service made him study the forest law a little more than otherwise he had done. But now the forests seem to be neglected or rather granted out by piecemeal, which kept in due order as in elder times and destructive encroachments of the countries suppressed, not only the deer (which are a trifle) but timber would have such increase as would supply shipping and save great charges and be a vast accommodation of the royal navy. And it is not to be wondered that this economy of the forests is laid aside, saving only as to offices for wardships; for the subject matter is unpopular, and the officers are on the one side corrupt and yield to all abuses and on the other side oppress and extort money of all they can; and, as if that were the end of their institution, mind little else.

54. His lordship was not without eminent good fortune as well as discretion to help him forward in his circuit practice, which made him arise in it faster than young men have commonly done. As when the Lord Chief Justice Hyde¹ was alive, he usually went the Norfolk circuit. The chief justice was a western man, but would not take the circuit so called because he would not break a law with a *non obstante*. And this judge was industriously favourable to his lordship calling him cousin in open court, which was a declaration that he would take it for a respect to himself to bring him causes, and that is the best account that can be given of a favourite; in which capacity a gentleman pretends to be easily heard, and that his errors and lapses, when they happen, may not offend the judge or hurt a cause, beyond which the profession of favour is censurable both in judge and counsel. But this benefit grew, like that under Sir Jeffry Palmer, at first out of a

¹ Uncle to the famous Earl of Clarendon. He was employed to draw the answer to the impeachment preferred by the Commons against the Duke of Buckingham, and was rewarded for the service with the place of lord chief justice. See § 43, n.

Temple acquaintance, which consisted of young Mr. Palmer and Mr. Edward Hyde the lord chancellor's son and some others of that family, who introduced his lordship to their patrons: which shows that in the erecting of a lawyer inns of court commons and conversation may be of vast use. In circuit practice there is need of an exquisite knowledge of the judge's humour as well as his learning and ability to try causes; and his lordship was a wonderful artist at nicking a judge's tendency to make it serve his turn, and yet never failed to pay the greatest regard and deference to his opinion: for so they get credit; because the judge for the most part thinks that person the best lawyer that respects most his opinion. I have heard his lordship say that sometimes he hath been forced to give up a cause to the judge's opinion, when he was plainly in the wrong, and when more contradiction had but made him more positive; and besides that in so doing he himself had weakened his own credit with the judge, and thereby been less able to set him right when he was inclined to it. For, when he found it went against the grain, he would not teaze, as the way is, to get credit with the countrymen who would be apt to say, "Look what pains he takes;" but for that time since there was no remedy let the matter go. And all this without blame with respect to his clients, for he could do no more in any respect but might do worse by many. And a good opinion so gained often helps at another time to good purpose and sometimes to ill purpose; as I heard it credibly reported of Serjeant Maynard, that being the leading counsel in a small-fee'd cause, would give it up to the judge's mistake and not contend to set him right that he might gain credit to mislead him in some other cause in which he was well fee'd.

55. There were some judges came that circuit, of whose abilities time hath kept no record, unless in the sinister way, as Morton, Archer,¹ &c. If such expressed any thing

¹ Sir William Morton was made a judge of King's Bench in 1665. He was a zealous supporter of Charles I. during the Civil War. He sentenced Claude Duval the highwayman, and prevented his receiving a pardon. Sir John Archer was appointed a judge of the Common Pleas, 4th November, 1663; removed in Christmas vacation 1672.

in favour of his lordship's client, he would echo, "Ay, my lord;" and then the other side fretted at him, as one that knowing better ought not to say so. Once Archer noted a difference between a renunciation of an executorship upon record, and *in pais*. "Ay, my lord," quoth the counsel; which made the judge as fierce as a lion, when he was so backed; and woe be to the other side if they contradicted it; though it was no better than arrant nonsense. There came other judges who were, and ever will be, famous among the learned in the laws; as Wadham Windham,¹ and the Lord Chief Justice Hales. His lordship had no way to court these, but by his learning and strength of reason. Hales had an early opinion of his lordship's skill in the law, and believed he would grow eminent in the profession. For once when the court was sat he perceived him crowding very hard to get in, and from the bench spoke to the people to make way for the little gentleman, "for," said he, "he will soon make way for himself." In short his lordship took all the pains he could to settle himself well in circuit practice. He used to say that the circuit found him business for the town and the town for the circuit.

56. One thing was principally his care which was to take good instructions in his chamber. He examined carefully the issue as the pleadings derived it; and perused all the deeds if it were a title and not seldom examined the witnesses if it were fact; by this he was enabled to make a judgment of the cause and to advise his client as to going on or not. And the attorney as well as the client by his care and dexterity in probing the cause, starting objections, inventing points, foretelling events, and what the judge will say, and the like, observed his character, and that he might be depended on, which engaged both afterwards to come to him again; especially the attorneys, who love such

Holding his office *quamdiu se bene gesserit*, he refused to surrender it, although prohibited from exercising his judicial functions. (*T. Raym. Rep.* 217.)

¹ Appointed one of the judges of the King's Bench in 1660. The references in the margin of Fitzherbert's *Natura Brevium*, to the Year Books and Reports, display the industry and learning of this eminent lawyer.

as have skill, and take pains to credit them by securing the best event a cause will bear.

57. I am advanced so far in these observations, as, without more, it may plainly be perceived that from an humble beginner rejoicing at a cause that came to him, his lordship soon became cock of the circuit; and every one that had a trial rejoiced to have him on his side. There was another gentleman, who grew up together with his lordship in the circuit practice with nearly the same speed, one Mr. Coleman, of the Burnt Ely family in Suffolk. And as it happily fell out there was no sort of emulation or competition to create uneasiness betwixt them, for they were for the most part opposed: if one of them was for the plaintiff the other was for the defendant, and from the beginning to the end held not only a fair correspondence but were very good friends; and how could it be otherwise when both were ingenuous good lawyers, ready speakers, candid gentlemen, and who in pursuit of their own improved each other's interest? Mr. Coleman had a very comely aspect and a very voluble tongue. It was said that an attorney asked his client that stood behind him, which of those two gentlemen should be his counsel? "Who?" said he, "why that nimble chaps there." It fell out that this gentleman died immaturity else he had fallen into that track of preferment as Sir William Jones fell into; of which there is an account elsewhere. There were divers serjeants and others that went the same circuit, but none that could cope with these two. I have heard them relate passages in their circuit practice, to make the company merry. As when they two have been together and a brace of serjeants to boot, and they knew a flat nonsuit in the cause, which the others did not see, they stood aside and left the brethren to wrangle with the court about nothing, till having laughed and sneered enough, one stepped forward and cutting the thread the cause fell all at once.

58. I have here showed divers instances of his lordship's favourable means of showing his abilities, but little or nothing of his conduct in any particular matter; and because his character may better appear by such than by general eulogies, I will subjoin one or two of his dexterous exploits. The Lady Dacres had suits depending against

Chute, the eldest son of her husband then deceased, for a sum of money secured upon land by her marriage contract;¹ which Chute had married her daughter, and dying left upon her hands four grandchildren to take care of. She entered upon the estate and took the profits for divers years, by which she became accountable. His lordship, being sensible that his aunt ran great hazards of being called to an account by the eldest son at his full age, and instead of having debt being made a debtor, advised her to get a decree and a manager appointed and she to answer only what monies she actually received, and as things fell out afterwards the reasons for this precaution appeared most lively, for it preserved her (who kept no good account) from oral testimonies of imaginary values, which had pinched her to the quick if she had not had that defence. That course in Chancery is more common of late than it was then; and it fell not under every one's cap to give so good advice. His lordship had much to do with this aunt; who used him but scurvily; as will appear from what I am going to relate.

59. She had a bill in Chancery against her and his lordship must draw her answer; which Serjeant Fountain² perused and directed to be more full in a chief point of fact. Which was done, and then other counsel told her she had confessed too much and the answer must be taken off the file and mended; which with leave of the court was also done and no harm yet. But his lordship's father asked her jocularly, "if she gave his son any fees for the business he did her?" This made her think it a plot of the young lawyer (but far from any colour of truth) to get money out of her; for he never saw a penny of her money for all his pains in trotting to and fro and doing business for her. And from that time she threw him off, accusing and railing at him all the town over for falsifying her answer and making her swear what was not true (if it had stood), to the ruin of her cause. And herein she served herself another way, for her adversary defamed her

¹ See § 10.

² John Fountain, of Salle in Norfolk. He was made serjeant by Richard Cromwell in 1658, and was one of the commissioners of the Great Seal in 1660. He died in 1671.

for swearing and unswearing and it was not amiss to have a button in the room. But she carried the quarrel so high as to get one of no small account to let Sir Jeoffry Palmer know what a snake (meaning his lordship) he had in his bosom. In short she intended his ruin if possible. But the merriment which the good attorney-general made with his cousin North for his early practice was a diversion sufficient. All this is not unseasonable to be remembered, because it reflects upon his lordship the singular virtue of humanity. For all the while she defamed him in this manner, which was for several years, he made no replies but by smiling, and paid her all the devoirs due to such a parent and served and assisted her in all her exigencies, she never failing to make use of him when she found it might be of profit to her : and yet she never could afford him a good word to his and her dying days.

60. His lordship had a relation, one Mr. Whitmore of Balms near London, a humoursome old gentleman but very famous for the mere eating and drinking part of house-keeping. He was owner of Waterbeach near Cambridge and took a fancy that his estate ought not to pay tithes and ordered his tenants expressly to pay none, with promise to defend them. The parson had no more to do but to go to law, and by advice brought an action of debt for treble damages upon the statute against substruction of tithes. The tenants got the whole demand to be put in one action ; and that stood for trial at the assizes. Then he consults his cousin North and retains him to defend this cause ; but shows him no manner of title to a discharge. So he could but tell him he would be routed and pay treble value of the tithes and that he must make an end. This signified nothing to one that was abandoned to his own testy humour. The cause came on and his lordship's utmost endeavour was to fetch him off with the single value and costs ; and that point he managed very artificially : for first he considered that Archer was the judge and it was always agreeable to him to stave off a long cause. After the cause was opened, his lordship for the defendant stepped forwards and told the judge that " this would be a long and intricate cause, being a title to a discharge of tithes which would require the reading a long series of

records and ancient writings. That his client was no quaker to deny payment of tithes were due, in which case the treble value was by the law intended as a sort of penalty. But this was to be a trial of a title which his client was advised he had to a discharge: therefore he moved that the single value might be settled; and if the cause went for the plaintiff he should have that and his costs (which costs, it seems, did not go if the treble value was recovered), and then they would proceed to their title." The other side mutinied against this imposition of Mr. North, but the judge was for him and they must be satisfied. Then did he open a long history of matters upon record, of bulls, monasteries, orders, greater and lesser houses, surrenders, patents and a great deal more, very proper if it had been true, while the counsel on the other side stared at him; and having done they bade him go to his evidence. He leaned back, as speaking to the attorney, and then, "My lord," said he, "we are very unhappy in this cause. The attorney tells me they forgot to examine their copies with the originals at the Tower;" and so, folding up his brief, "My lord," said he, "they must have the verdict and we must come better prepared another time." So, notwithstanding all the mutiny the other side could make, the judge held them to it and they were choused of the treble value. This was no iniquity because it was not to defraud the duty but to shift off the penalty. But the old gentleman told his cousin North he had given away his cause. His lordship thought he had done him service enough; and could but just (with the help of the beforesaid reason) satisfy himself that he had not done ill.

61. Before I mention the farther steps of his lordship's rising, I must get rid of a scurvy downfall he had which had well nigh cost him his life. That he was what was called a sober person was well known; but withal, that he loved a merry glass with a friend. But once in the circuit, being invited with the rest of the counsel to dine at Colchester with the recorder Sir John Shaw, who was well known to be one of the greatest kill-cows at drinking in the nation, he with the rest of his brethren, by methods too well known, got very drunk. They were obliged to go on and in that condition mounted, but some dropped and

others proceeded. His lordship had a clerk, one Lucas, a very drunken fellow but at that time not far gone. He thought it his duty to have a tender care of his master, who having had one fall (contrary to the sound advice of his experienced clerk) would needs get up again calling him all to nought for his pains. His lordship was got upon a very sprightly nag that trotted on very hard, and Lucas came near to persuade him not to go so fast; but that put the horse upon the run, and away he went with his master full speed so as none could follow him. The horse when he found himself clear of pursuers, stopped his course by degrees and went with his rider (fast asleep upon his back) into a pond to drink; and there sat his lordship upon the sally. But before he fell, Mr. Andrew Card, now an eminent practiser of conveyancing in Gray's Inn, and then Mr. Coleman's clerk, came up time enough to get the horse out of the pond before he fell off; else he had been lost: for which service his lordship ever had a value for Mr. Card.

62. They took him into a public house nigh at hand and left him to the care of his man; but so dead drunk that he knew nothing that happened to him. He was put into a bed; and the rest of the company went on for fear of losing their market. Next morning, when his lordship awaked he found he was in a strange place, and that at a fire-side in that room there were some women talking softly (for talk they must): he sent out all his senses to spy if he could what the matter was. He could just perceive they talked of him. Then he called for Lucas and bade all go out of the room but him; and then, "Lucas," said he, "where am I?" He was glad the danger (of which Lucas gave him a sensible account) was over and got him up to go after his fellows.

63. I remember when his lordship told this story of himself, he said the image he had when his horse first trotted and so faster and faster was as if his head knocked against a large sheet of lead, as a ceiling over him; and, after that he remembered nothing at all of what happened till he awoke. His lordship, of one that was not morose and uncomplaisant, was the most sober that ever marched through the world as he did. I that was almost con-

tinually with him never saw him in a condition they call overtaken; and the most hath been but just discoverable in his speech; for he had strength of head to bear a great deal: and when he found that infirmity coming upon him he used to sit smiling and say little or nothing; so harmless a thing of a petit good fellow was he: and this only in company that in some sort constrained him; and that was very seldom. As once, when he was attorney-general, he dined with the Earl of Sandwich and in the afternoon went to the privy council to plead upon a petition before the king: and the next day after, the earl asked one of the lords how Mr. Attorney behaved himself; "Very well," said that lord. "I thought so," answered the earl, "for I sent him instructed with at least three bottles in his belly." That was a good medicine for his modesty, and perhaps at court no ill preparative. But, setting aside that rhodomontade, his lordship by a steady temperance and sobriety held the empire of his reason and vigour of his constitution safe and upright, till, under the cold hand of death, both fell together. But as for such entertainments as these, it is great pity that the tokens of barbarity should yet remain; and much more that the consequences, often fatal, should be as braves of conquests with a people who would take it ill not to be accounted civilized, wise, and learned.

64. His lordship's course of life, while he was in great business, was most philosophical till he was solicitor-general and married; and then he kept house and at meals scarce ever failed his family: but before, he used the commons in the hall at dinner personally and at night in his chamber. And when he was out of commons the cook usually provided his meals; but at night he desired the company of some known and ingenious friends to join in a costelet and a sallad at Chattelin's, where a bottle of wine sufficed and the company dressed their own feast that consisted in friendly and agreeable conversation. But in term, and while business was stirring, he kept his chamber because (in order to next day's work) the attorneys and agents came in at all hours; and then he desired the company of a friend or two that, in the intervals of taking instructions, he might come out and solace a little with

them and return when he was summoned. And the repast among us all was only his commons and a single bottle; but what is that to the feast I mentioned which was never wanting? When his practice was but little, and for the most part when he was a student, he made it a rule not to leave his chamber before eight at night; and if he had no appointed company, he hath often taken me to walk about in the gardens with him till bed-time; for he never loved at such times to be alone; but, having any company, he could discharge his thoughts by discourse. After he was of the king's counsel he kept a coach and at leisure times used to air himself in that; but with a friend to receive his discourse and give handles for more. But while I was with him, which was first while Sir Jeffry Palmer was but just alive, I cannot say I ever knew him to have been twice at any tavern.

65. Here we drop our circuiteer; which character lasted till his lordship was made the king's solicitor-general: and that was when Sir Edward Turner was made lord chief baron: for upon the death of the attorney-general Palmer, Mr. Solicitor Finch was made attorney; and there being an opposition made by the Duke of Bucks, in favour of Mr. Jones, against his lordship, who had much the fairer pretence, an expedient, for that time, was found, by making the then speaker, Sir Edward Turner, solicitor.¹ But of this affair we have his lordship's notes, which I shall insert, and add a comment, according to promise—

“His (Sir Jeffry Palmer's) death made a contrast.”

66. This incident made the wheel of preferments turn. Sir Heneage Finch, who was solicitor, was made attorney-general. Then the question came who should succeed him? The Lord Keeper Bridgman and the new attorney besides the indifferent interest at court and, I believe, the king himself, were for his lordship; and why not? For he was next oars the king's servant already, and had not demerited. It had been ungracious to have postponed him and taken in a new man that never had served; and

¹ Sir Edward Turner was made Chief Baron of the Exchequer in May, 1671, whereupon Sir Francis North became Solicitor-General. Heneage Finch had been made Attorney-General the year before, viz., 10th May, 1670, at the death of Sir Geoffrey Palmer.

none might guess at his inclinations to serve well. And this was Mr. Jones who, being a proud man, could scarce bear his lordship to go on stepping before him. He applies to the Duke of Buckingham, who at that time was respected as a premier minister at court. But his character little suited that pretension; for he commonly turned day into night and night into day, and knew no order of life or time but after the calls of his appetite; and those were either lewd or profane. While he was in affairs he favoured the true enemies of the court the fanatics: and when he was out he set up for one of the heads of that faction. He was so entirely abandoned to his pleasures and ease that he seldom regularly attended on any account; but yet, for revenge or faction, he was a diligent solicitor; and undertook to get Mr. Jones the solicitor's place. He plied the king so close that he knew not how to clear himself of him. But it was understood that the king could not be brought to dash cold water in Mr. North's face, against all reason, justice, and his majesty's own interest; and so it depended some time. At last an expedient was found, viz.—

“Sir Edward Turner made solicitor. His promotion made no contrast.”

67. This gentleman had served long as speaker of parliament, and had been useful to the crown and also to himself. But on the discovery of a small present made him by the East India Company, he was blown in the House of Commons. The anti-court party took all advantages against the court and made a mountain of this mouse; for it was but a trifle. However it lost him much of his credit and authority in the chair which he was used to have; and he thought fit to give way and not sit there longer to be exposed to the affronts which would continually be thrown at him. This made him incline to accept the solicitor's place until somewhat better fell and then the king was at ease. About six months after, Sir Edward Turner was made Lord Chief Baron of the Exchequer and the solicitor's place fell void. The king resolved to have no more such trouble about filling it, but forthwith declared that Mr. North (then Sir Francis) should succeed—

“ Sir William Jones, king’s counsel.”

68. And to satisfy the Duke of Bucks in some measure, his friend, Sir William Jones (then also knighted) was made of the king’s counsel. And since (as they say) half a loaf is better than no bread, this promotion in part though not altogether satisfied his ambition; for it was sufficiently thereby declared that, if not to lead he was sure enough to follow in the track of preferments.

69. And because it is impossible to account for the lives of busy men, without touching upon some certain dealings of those persons with whom they transacted; whose behaviour and tempers will be interwoven and make good the fulness of the relation, as things of different complexions distinguish each other; and the most retired converse is material to characters because a man is known by the company he keeps: it will be proper to insert in this work the portraits of some persons contemporary with his lordship, consorts and coadjutors as well as adversaries in business. And hence will result a petit biography wherein the remarkables may assist the theory of human nature, which consists in the knowledge of its perfections and infirmities. And none more famous for both of these than Sir William Jones, who, upon the strength of the Duke of Bucks set his lordship so hard for the solicitor-general’s place. But having said so much of him already in the *Examen*,¹ I shall make no repetition here. I will only add that,

70. If I may have leave to guess, the greatest load of all that sat upon and oppressed his spirits, was his undue fervor in prosecuting men to death for high treason upon the foot of Oates’s plot. There are reasons to make one believe he was at the bottom of the whole stratagem; which, if the truth were so, stains his character and evacuates all that hath been said of his probity unless the heathen sentence, *regnandi causa*, or for the sake of governing, pass for good morality. His figging about at the first entrance and sooner than it could be known that Godfrey was in danger, except by his not dining at home: his running from one great man to another, as he did, to

¹ See *Examen*, p. 507 et seq.

say it was thought that Godfrey was made away with by the papists: and once, being at his villa in Hampstead, when the whole faction laboured to scatter terrors about the town and nation as if nothing was safe from the papists, he sent an express to London to have his billets removed from the fore to the back cellar of his house in London, for fear of the fireballs of the jesuits: and his using all the arts of his profession against the lives of so many poor men as he convicted to death for the plot, and some no very commendable ones to be used even in common causes of property, as have been touched elsewhere; and after that, setting up the ignoramus practices by justifying the perjury in print; which was when the tables were turned and his friends were obnoxious; as if the law were a party weathercock: and then writing to justify the exorbitant doings of the Westminster House of Commons after the whole nation resented them, by a pamphlet in answer to the king's declaration of his reasons:—all these matters were false and, as proved, vain efforts in party work; which he was sensible turned upon him and, staring him in the face, told him he ought to have been wiser. One thing his lordship remarked of him; which was, that, when any notable party project was in embryo he made him a visit either to terrify or espy and, by the air of his countenance, to gather somewhat. And this more especially when any harm was intended his lordship through the House of Commons. Once he came to see him and told him that "Now they had them fast." It was about the time of the reform of the council and when he had quitted his place. "Whitehall," said he, "must render in six months; and what will you do then?" His lordship answered quick, "I will join with those that shall turn you out." This answer made him look very dull being not that which he came for. These instances made his lordship conclude that, whenever he had the honour of a visit from him, there was somewhat very sinister in the wind; and the ill omen appeared. But, to conclude, if this gentleman could have been purged of an immane conceit of himself and of his own worth, and made clean from his disaffection to the crown and monarchy of England, which always warped his engage-

ments towards the sectarian and republican model and made him restless and untoward in all his actions, he had been deservedly a famous professor of the law and, as such, celebrated in after times equally with, if not superior to, the rest of his contemporaries.

71. But, to return. His lordship, as well before as after his being made solicitor-general and while he was king's counsel, made the best of his time in Westminster Hall. And however at first he planted himself in the way of King's Bench practice, he found such beneficial calls to other courts, especially to the Chancery, that he thought it best to comply with them. And so to the Exchequer, Duchy, &c., which filled him exceedingly with business; and none more gainful than that of the Chancery, in which he got so much credit that, at length he made that court his home and went off to other courts only on great occasions, as when solemn arguments, trials at the bar, and the like, engaged him. But this I have heard him say and sometimes observed that, when he was not concerned in the causes at hearing in Chancery he used to go over to the King's Bench; which being a court of law, his vacant time spent there would be more beneficial to him. And so he sat within the bar, with his note-book reporting as the students about the court did. He as little neglected opportunities of acquiring knowledge in the law as of getting money by the practice of it. Witness this one instance; every Christmas, during all the time of his practice he read Littleton all over. And this he enjoined himself for a task: for that book having gained an authority as a tract of law and the foundation of conveyancing, he judged it necessary to be punctually remembered without giving time the advantage to obliterate or corrupt any part of it from his just thoughts.

72. It is obvious to imagine that a person preferred and in capital practice of the law must needs be noted for many excellent performances, as he was in numerous instances of nice causes that he conducted. But it is not possible to go over the list of his clients and show what part he had in their several hearings, arguments, trials at law, and the like, unless a diary of causes had been kept for that purpose; and that must have been a large one for he was in every

cause of moment. Nor can I say, upon my memory, how many families of nobility and others having once made use of his advice made him afterwards arbiter of all their concerns; nor is it to any good purpose so to do unless it might be also demonstrated wherein his lordship's sagacity, or management, was superlative. It may be equally alleged of every eminent practiser in the law, that he was concerned in great causes whereof some went on his side. So that a general observation of consequences, such as his never losing ground but rather rising in reputation from the first to the last and that, passing through the meanest, his lordship arrived at the utmost preferment and all without obloquy or reprehension, implies all that can be inferred to his advantage even from the particulars if we had them. But yet I shall show some instances that fell within my own observation which were of an extraordinary nature, and showed his lordship's singular application and success in causes that rested wholly upon his advice and conduct.

73. And here I might properly insert the great cause between Soams and Bernardiston, which was recovered from a desperate malign influence of the times, purely by the strength of his reason and debate, against a torrent of authority. But since it is particularly related in the *Examen*,¹ and a clear account of the several steps it took in Westminster Hall and how it was finally adjudged in Serjeant's Inn Hall by his lordship when he was chief justice of the Common Pleas, may be seen there, I shall say nothing of it here but refer the reader to it. It will also be found declared in that book, in what manner his lordship was prosecuted in the House of Commons upon account of this judgment of his; and therefore I shall not make any repetition of it here, but only observe one or two things upon the whole of the prosecution. And first, that the lords, at a jocular motion of the Lord Wharton, made

¹ A very minute account of the circumstances attending this case may be found in the *Examen* (p. 516). It is also reported, in its various stages, in 2 Levinz, 114; Pollexfen, 470; 1 Freeman, 380, 390, 430; 3 Keble, 365, &c.; 6 *Howell's State Trials*, 1063. A manuscript report of Sir F. North's argument may be found amongst the *Hargrave MSS.* in the British Museum, No. 339.

holiday of this day of the motion in the House of Commons, which shows that the party in both houses were set for the purpose. For if the lords had sat in the morning the design, to be executed at one o'clock, might have taken wind.

2. That although this stir was made on his lordship's account for malice and revenge, or rather, ambition of his place, yet his name was not touched, by any mention from the beginning to the end. The reason of which was, because his interest and friendships among the best quality were great and also his character for justice so well known that, upon a declared personal attack, a fiercer opposition had been made. 3. That a person of a sound and valuable reputation and esteemed useful to the public, shall have friends unknown appear in time of need, to assist and see justice done him. 4. That the sincerity of any business may be known by the means used to accomplish it; for if either be false and perfidious the other will be so also; and they counter refer to each other. If a business be bad honest means will never be used to come at it; and if tricks and falseness appear in the approaches the end is the same. 5. That shifts and subterfuges and clancular compositions are of the worst consequence to a just magistrate, who is upon his defence; for being discovered they lose a real interest, and of friends create enemies which in those times appeared in divers instances.

74. I shall not be just to his lordship's memory if I do not subjoin the rest of this prosecution, which after his death was resumed, and with what design it was carried on. Upon the Revolution, divers persons who had suffered for their crimes in the foregoing reigns, thought that an opportunity was fallen in their way to be revenged and reimbursed their fines and what else their malice or avarice suggested, not by any slow process of justice but by act of parliament, all at once. And how far this design extended, what proffers were made, and how they came off, was a work of another undertaking (see the Examen); and here I must deal with what concerned only his lordship, whereof this revived case was one. The sheriff Soams had been long dead, and his family so low that nothing was expected to be got from thence; yet Sir Samuel Bernardiston brought a writ of error of this Exchequer Chamber judgment into the

House of Lords; and there the knight lawed by himself, for no person opposed him, and upon hearing, the lords assisted by the judges confirmed the reversal, which was beside all expectation. Pending this writ of error, his lordship's friends, whom he had intrusted with the affairs of his family, had certain intelligence that the design was (if this reversal had been reversed) to have sued to the parliament for an act to pass, for charging the reimbursement of the damages recovered by Sir Samuel Bernardiston upon the estate of the Lord Chief Justice North, upon a surmise that his judgment was reversed by reason of his lordship's undue solicitation. And if the lords had set aside the reversal as illegal who would doubt of the rest? At least a vote would put it out of doubt. It was a most incredible surmise that his lordship, who was known to be a strict observer of the rules and decorum of a judge and never would bear with any undue solicitation to himself in matters depending, should so criminally, as they would have presumed, solicit other judges in that manner. But corrupt interest and faction will presume and, having power, perpetrate any thing though never so false to serve the turn.

75. While this dernier writ of error hung in the House of Lords undetermined, his lordship's said friends were solicitous how to behave themselves. For after they knew that the shot was made at them it was not advisable to make any appearance or pretence to defend; for that would have had an evil construction. And they durst not so much as speak to any of the judges or lords for the like reason: and negative errors being best, not knowing what to do they did nothing at all. At length one of them leaned against the stall of Fox the bookseller not a little pensive; and Fox leaned over, and "Sir," said he, "there is much discourse of a case between Soams and Bernardiston judged by the Lord Keeper North. I have a copy of his lordship's argument, and, with your leave, I will print it; and, perhaps, it may do some service." The hint instantly took place; and leave being given, it was printed and published very fair and well; and coming among the lords, it discharged the prejudices the cause lay under and prepared them to admit the reasons the judges gave in the House, and also to create some favour to the oppressed: and so

ended this long tale. But, by way of remark to show how faction will get the better of common sense and truth even in men great pretenders to both, I must add that Pollexfen, an arguer for Sir Samuel Bernardiston, since the Revolution, published (or fitted for the press) a book of reports, as they are called, consisting chiefly of his factious arguments; and particularly in this case: but most brazenly and untruly in his preface, tells "how he had carried the cause, if the Lord Chief Justice North had not solicited the judges to give a contrary judgment;" or to that effect. This book and preface was shown to the then Lord Chief Justice Holt, who did a singular piece of justice to his lordship's memory and honour; for he sent for the bookseller to answer it before him, and had suppressed the book if he had not promised to change the preface and leave out that scandal: which was done; but some copies had escaped before.

76. The reader will also find in the aforesaid Examen, a particular account of the designs of some gentlemen that had been of the faction in King Charles the Second's time, after the Revolution to charge the fines of the rioters by act of parliament upon the estates of some particular persons, of whom his lordship was one; and how it was frustrated and came to nothing: so I shall let that pass and observe only that his lordship's friends were the less surprised at this attack, and others of like nature threatened, by reason of advice they had from Holland, that the common discourse of the fugitives and others of the party there was of their firm purpose to take away the estates of the Tories, by act of parliament. But the times fell into such a thorough settlement that such injustice was not encouraged. How they would have used his lordship if he had lived, I cannot say; bad enough, if some had had their wills. We were informed that, in the House, upon mention of the state and city affairs, divers members were pleased to name him and made sharp closes to the prejudice of his name and family. But there were always some, especially of the Western gentlemen, who interposing screened both. Therefore, as it is a hard case that an upright magistrate should be ever so exposed so it is a comfort that his sincerity will create friends who, unasked,

will show themselves in his favour: whereby the old saying is verified, viz. "Honesty is the best policy."

77. This is one of those capital causes in which his lordship's singular application and sagacity appeared: but I shall give an account of one more, which I think will fully answer my design. And that was the cause of Cuts and Pickering.¹ Sir John Cuts of Childersly in Cambridge-shire, had an aunt, one Mrs. Weld, who married Mr. Pickering, and by his will gave her an estate called Drayton, value £300 per annum, for ninety-nine years "if she should so long live." Mr. Pickering, desiring not to hang upon the thread of his wife's life for such an estate but to have it for the term absolute, which is very near equal to the inheritance, thought fit to erase from the will these words of reference to her life. He had opportunity to do it; for he was made executor and accordingly had the will in his keeping; which, in his good time, was proved and lodged in the prerogative office. The relations that were the heirs and devisees of the capital estate, and (among other things) of this (subject to Mrs. Pickering's life) were minors and their affairs managed by their mother. I think the eldest of these not long since was made a peer, and was called my Lord Cuts.² But his lordship's first acquaintance with the family went no farther than Sir John Cuts and this Mr. Pickering and his wife. He was a subtle fellow, money-hunter, but a great trifler and very avaricious; but withal a mighty pretender to puritanism and seeming to be more godly than other men. He used to frequent the Rolls chapel and most busily write the sermon in his hat, "that he might not be seen." And he used to visit the Lord Chief Justice Hales; and by canting had persuaded him he was a most religious man. He was not without suspicion that some suits might be stirred by the Cuts's against him upon this will; and much dreaded a discovery of this rasure, (a guilty conscience needs no accuser): he was almost continually upon the watch at the Temple and among the lawyers; sometimes with one and

¹ Reported briefly in 1 Ventris 197, 3 Keb. 2.

² General John Cutts created Dec. 6, 1690, Baron Cutts of Gowran, in the kingdom of Ireland. The husband of the beautiful Lady Cutts. (*Noble's Granger*, vol. i. p. 371).

then with another eaves-dropping for intelligence, but dropping no money; and for a whole term almost every day, at one time or other, he called upon his cousin North (there was some relation but remote between him and Pickering's wife), thinking himself to be thereby privileged to be impertinent with his importune questions whenever he pleased. He never had the civility to offer a fee or to ask his lordship to be of counsel with him in general or particular or on any account whatsoever. I remember one night his lordship came out from his study, having just parted from him in a great pet, wishing heartily that his adversaries would come and retain him that he might shake off so troublesome a fellow; and the next day Mrs. Cuts came, with much apology for her presumption in tendering a retainer in her cause against Mr. Pickering, fearing he might be under engagements to him. His lordship told her no and took her fee, and wrote her down in his book of retainers, so she went away satisfied: and well she might, for that minute's work saved the estate. Pickering, that dogged this gentlewoman to see where she went, perceived her go up to and return from his cousin North's chamber; and then he concluded she was in earnest, and up he goes and offers his retaining fee; "No," his lordship told him, "he was already retained on the other side," and showed him his book. His discourse upon the matter signified nothing; he must have patience and provide himself elsewhere. He might repent his neglect but it was too late.

78. After this Mrs. Cuts came to his lordship in a very great concern, saying she had very credible information that there was a foul rasure in Sir John Cuts's will, that in consequence lost Drayton, after Mrs. Pickering's death from her (Mrs. Cuts's) children. His lordship immediately took coach and went to Doctors' Commons to view the original will. There he found the rasure most evident, and not done so carefully but by the bottoms and tops of the long letters and the distances that determined the intermediate ones, the words, *if she should so long live*, might be read. Thereupon he took a paper, and made what they call a fac-simile of the marks and distances of those small specks as were not scraped out. Then his lordship called

the officers and showed them the rasure and the marks, with the resemblance he had made of them, and charged them all to take care that none should see the will but in the presence of an officer, for there would be a suit at law to be determined upon view of that rasure. This matter being fixed, the lady went into Chancery and having filed her bill for a discovery, Pickering answers fully and denies the rasure, and at the hearing a trial was directed to be had to find if this rasure was since the publication and by whom. The cause came to be tried at the King' Bench bar before the Lord Chief Justice Hales and the rest of the justices of that bench, and his lordship managed in chief for the Cuts's.

79. It was then believed that Pickering had found means to insinuate to the Chief Justice, that this was a malicious prosecution and raised up against him by a pert young lawyer of a different persuasion and tendency from him, but that he himself was innocent; but, however it happened, the chief justice took in violently on the side of Pickering, assuredly believing better of him than he deserved. It is always a hard cause upon a lawyer when he is to manage against the prejudice of a court, for what is to be said or done when presumptions pass on the one side, and the other side is held to positive proof and no less than demonstration? The chief justice was so very hard upon his lordship and his cause that, if there had not been an uncontrollable evidence of the fraud, the cause had miscarried. But it happened that as his lordship upon the bench was going to direct the jury (as every one expected) to acquit Pickering, one of the counsel mentioned another witness they had to prove Pickering's own confession that, when the will was first opened, those words were in. The witness came in and swore it positively. "Well," said the chief, "now you shall hear what Mr. Pickering will say to that." He there-upon being called came down into the court and stood directly opposite to the witness that confronted him. "Now what say you to this?" said the chief. "My lord," said he, "I was not bound to say what the truth was to him." There was an instance of the value of face to face. The answer was so knavish and silly withal that the chief justice let fall his countenance, and knocking his stick, left the cause to the

jury's cognisance without a word of direction given them one way or other ; and they without going from the bar, found Pickering author of the rasure since the will published. Such cutting discoveries knaves will make of themselves, when surprised and not allowed time to dress up their answers in the best accoutrements, especially before sagacious men. And none was ever more so than that famous chief justice, who although subject as most mortal men are to prejudices, yet upon a clear conviction sacrificed his proposition to truth.

80. It was the Lord Keeper North's good fortune to enter his practice in the circuits under this judge, whose reputation for his great ability in the law, and rigorous justice, will be very long-lived in Westminster Hall and the Inns of Court and Chancery ; for there was a conjunction of characters ; his and the times conspiring to aggrandize it. After having improved his knowledge as a student, by reporting from him when he sat as judge of the Common Pleas and as a practiser in the Northern circuits, it so happened that, in the unaccountable rolling of preferments in the law, it became his lordship's province to judge of and, for cause apparent, to correct the errors of that great man. The truth is, his lordship took early into a course diametrically opposite to that approved by Hales : for the principles of the former being demagogical, could not allow much favour to one who rose a monarchist declared. Then, after the latter, by being made Chief Justice of the Common Pleas, together with the other judges of that court and those of the Exchequer, had jurisdiction of errors in judgment given by the Court of King's Bench, the separation was wider ; and the old judge, by a certain formal overlooking of him and refining of arguments against all he appeared for, affected to show it. And to say truth, that judge had acquired an authority so transcendent that his opinions were, by most lawyers and others, thought incontestable ; and he was habituated in not bearing contradiction and had no value for any person whatever that did not subscribe to him. His lordship knew him perfectly well and revered him for his great learning in the history, law, and records of the English constitution. I have heard him say that, while Hales was chief baron of the Exchequer,

by means of his great learning even against his inclination, he did the crown more justice in that court than any others in his place had done with all their good will and less knowledge. But his lordship knew also his foible which was leaning towards the popular; yet, when he knew the law was for the king (as well he might, being acquainted with all the records of the court to which men of the law are commonly strangers), he failed not to judge accordingly.

81. He was an upright judge if taken within himself; and when he appeared, as he often did and really was, partial, his inclination or prejudice, insensibly to himself, drew his judgment aside. His bias lay strangely for and against characters and denominations; and sometimes the very habits of persons. If one party was a courtier and well dressed, and the other a sort of puritan with a black cap and plain clothes, he insensibly thought the justice of the cause with the latter. If the dissenting or anti-court party was at the back of a cause, he was very seldom impartial; and the loyalists had always a great disadvantage before him. And he ever sat hard upon his lordship in his practice in causes of that nature, as may be observed in the cases of Cuts and Pickering, just before, and of Soams and Bernardiston elsewhere related. It is said he was once caught. A courtier who had a cause to be tried before him, got one to go to him as from the king, to speak for favour to his adversary, and so carried his point; for the chief justice could not think any person to be in the right that came so unduly recommended.

82. He became the cushion exceedingly well: his manner of hearing patient, his directions pertinent, and his discourses copious and, although he hesitated often, fluent. His stop for a word, by the produce always paid for the delay; and on some occasions, he would utter sentences heroic. One of the bankers, a courtier by name Sir Robert Viner, when he was Lord Mayor of London, delayed making a return to a mandamus and the prosecutor moved for an attachment against him.¹ The recorder Howel appeared; and to avert the rule for an attachment, alleged the great-

¹ This transaction arose out of the case of *Emerton v. Hyde*, mentioned *post*, §86.

ness of his magistracy ; and the disorder that might happen in the city, if the mayor were imprisoned. The chief justice put his thumbs in his girdle, as his way was, and, "Tell me of the mayor of London?" said he ; "tell me of the mayor of Queenborough:" but still this was against the court: he put on the show of much valour, as if the danger seemed to lie on that side, from whence either loss of his place (of which he really made no great account) or some more violent, or, as they pretended, arbitrary infliction might fall upon him. Whereas in truth that side was safe, which he must needs know, and that all real danger to a judge was from the impetuous fury of a rabble who have as little sense and discretion as justice ; and from the House of Commons who seldom want their wills and, for the most part, with the power of the crown obtain them. Against these powers he was very fearful ; and one bred as he was in the rebellious times, when the government at best was but rout and riot, either of rabble committees or soldiers, may be allowed to have an idea of their tyranny and consequently stand in fear of such brutish violence and injustice as they committed. But it is pleasant to consider that this man's not fearing the court was accounted valour ; that is by the populace, who never accounted his fear of themselves to have been a mere timidity.

83. Whatever his courage or fear was, it is most certain his vanity was excessive ; which grew out of a self-conversation and being little abroad. But when he was off from the seat of justice and at home, his conversation was with none but flatterers. He was allowed on all hands to be the most profound lawyer of his time, and he knew it: but that did not serve him ; but he would be also a profound philosopher, naturalist, poet, and divine, and measured his abilities in all these by the scale of his learning in the law which he knew how to value ; and if he postponed any it was the law to all the rest ; for he was so bizarre in his dispositions that he almost suppressed his collections and writings of the law ; which were a treasure and, being published, would have been a monument of him beyond the power of marble. But instead of that he ordered them to be locked up in Lincoln's Inn library ; and made no scruple to send forth little tracts in philosophy,

as the Non-gravitation of Fluids, *Difficiles Nugæ*, prosecuting the same *nugæ* or trifles upon the baroscope; which made Sir William Jones say that his whole life (meaning in private, as I suppose) was *nugarum plena*, or made up of trifles: his *Origination of Mankind*, in appearance a great work, with nothing in it and that which scarce any one ever read or will read. And what is very remarkable, the very childish ignorance of his subject showed in these books is dressed in most accurate method, proper expression and significant English style, better than which one would not desire to meet with as a temptation to read. He published much in speculative devotion, part prose part verse: and the latter hobbled so near the style of the other as to be distinguished chiefly by being worse. But his matter and language not in rhyme was pious and good. He took a fancy to be like Pomponius Atticus, or one that kept above water in all times and well esteemed by all parties. He published a short account of that noble Roman's life and, at the entrance, a translation of the same in Cornelius Nepos; but so ill done as would have brought the rod over the back of a schoolboy. A hard censure without proof: therefore take the following instances. 1.—*Et elatus est in lecticulâ*; which means that (after he was dead) “he was carried out upon a bier.” The word *efferre* is peculiarly proper in that place. But he rendered it “he was lifted up in his bed.” Then, 2.—*Et sic globus iste consensionis, dissensione unius hominis, disjectus est*. That is, “and so that confederated party was broke by one man's leaving them.” But he,—“and so that ball of contention, by the dissent of one man was let fall.” So miserably will the learnedest men err that presume out of their sphere, and fail in that great point of wisdom the knowing one's self. This great man was most unfortunate in his family; for he married his own servant maid, and then for excuse said there was no wisdom below the girdle.¹ All his sons died in the sink of lewdness and debauchery; and if he was to blame in

¹ His first wife was Anne, daughter of Sir Henry Moore, of Faly in Berkshire. “His second wife,” says Burnet, “was Anne the daughter of Mr. Joseph Bishop, of Faly in Berkshire, by whom he had no children. He gives her a great character in his will as a most dutiful,

their education it was by too much of rigour rather than of liberty ; which (rigour), Montaigne says, seldom fails of that consequence. Although he was very grave in his own person, he loved the most bizarre and irregular wits, in the practice of the law before him, most extravagantly. And besides he was the most flatterable creature that ever was known ; for there was a method of resignation to him, and treating him with little meals, and private with his pipe at ease, which certainly captivated him. So Sir George Jeffries gained as great an ascendant in practice over him as ever counsel had over a judge. In short, to give every one his due, there was in him the most of learning and wisdom joined with ignorance and folly that ever was known to coincide in the character of any one man in the world.

84. His lordship of whom I write, by his extent of bar practice, while he stood in the front on the one side or the other in most or rather every great cause that moved in Westminster hall, had a full view of this great man, and very often observing him a slave to prejudice, a subtilizer, and inventor of unheard-of distinctions, and exercising criticisms to get the better of known maxims of the law and thereby to transmit great estates and interests from some persons and families to others, and knowing well these infirmities of his, was not moved at all at what he did. And this overruling temper of his did not so much take place in small concerns and in those between common men ; for there his justice shined most, and armed him with reputation that sustained his authority to do as he pleased in greater. Whereby it seems that if he never had dealt in other but great causes to hear and determine them, he might have been accounted the worst judge that ever sat. But although his lordship was not surprised at this behaviour of the chief justice, yet he was very much concerned to see the generality, both gentle and simple, lawyers and laymen, idolize him as if there had never been such a miracle of justice since Adam. His

faithful, and loving wife, and therefore trusted the breeding of his grandchildren to her care, and left her one of his executors" (*Life of Hale*, p. 92.)

voice was oracular and his person little less than adored. And his lordship knew also that this fascination proceeded from faction, and had at the root more of confederacy than judgment; for, because the chief justice was in principle averse to monarchy and the court, they all with one voice exalted him in order to have him lead the law and all the lawyers that way, and left no room for just thoughts of him which attributed enough of honour and commendation; but all that he said was right and whoever said to the contrary was wrong. In opposition to this impetuous, or rather rage of reputation (under which his lordship was himself a sufferer, as may be seen elsewhere) his lordship thought fit to note down the several instances in his own observation of this judge's fondness and partiality; which he intended to have explained at large; when he was at leisure and should have had a disposition so to do. These notes are come to my hand, and being willing to declare the scope of them as well as I can, I will pass them one by one, as follows—

“Nosworthy *versus* Basset. Trials directed with all art and care, yet slighted.”

85. It is usual in dark matters of fact to refer them to trials at common law, and a verdict upon one trial is always allowed to be given in for good evidence upon any other trial of the same fact. Nosworthy had married a daughter of Serjeant Maynard, who urged very hard against Sir William Basset, an old cavalier or loyalist. There lay the characteristic. Care was taken to settle the issues for two trials successive, and with all the art that might be, to give Nosworthy the advantage. If either of them had taken accordingly on his side, there was no doubt but the authority of them had been great in the consequence of future proceedings; but it happened that both went for Basset. Notwithstanding that, another trial was directed to be at the bar before Hales himself; and when the authority of two verdicts was alleged, he slighted and had no regard to them—¹

¹ See this case reported in its various stages in 3 Mod. 203. 1 Show. 537. 2 Salk. 592. Hard. 375. The form of the action was Ejectment, and therefore the observation in the text, that “a verdict upon one trial

“Hyde *versus* Emerton, marriage affectedly tried to prejudice an odious cause against right.”

86. The principle depended in the court of the Arches in a trial of marriage. And the question was whether the son of the Lord Treasurer Danby, or Mr. Emerton, a sort of dissenter, was married to Mrs. Hyde. The cause was wholly ecclesiastical, and from the Arches must (upon appeal) go to the delegates, and could by no possibility be drawn from that jurisdiction to the common law, and all titles whatever under that marriage, must (even at common law) stand and fall by the sentence in the ecclesiastical court. Emerton was advised to bring an ejectment for the lady's land and to get that cause tried at the bar before Hales. It was alleged in delay of the trial, that the right of the marriage depended in the Arches, and till sentence the right could not appear at law; for that court was decisive. The matter of delays in the Arches was stood upon as a reason to proceed, and however answered upon the necessity by their course and rules, it passed and the trial went on. And it was managed by Hales with frequent exclamations at the clearness of Emerton's title and proof of the marriage. The pinch was that, by the matrimonial law, fathers and mothers are not witnesses to matches for preferment of children; but the common law allowed them: and in that lay the clearness.¹ But it was thought that such a trial, carried with the opinion of so popular a judge, would awe the ecclesiastical court and so be of service towards the sustaining a cause grounded upon a very odious practice of Emerton to gain that lady. The characteristic of this cause was evident enough; and so it was in the case of Soams and Bernardiston; see the *Examen*. In that, Hales said he would not try the cause before the House of Commons had decided the right; but there the reason lay counter, as was showed in that book.

is always allowed to be given in for good evidence upon any other trial of the same fact, is inapplicable.

¹ This case is shortly reported in Keeble's Reports, vol. iii. p. 447. See also Stillingfleet's Discourse at the Meeting of the Delegates. (*Discourses*, p. 79.) It was undoubtedly the duty of Hale to suffer the cause to proceed, and to receive the evidence of those witnesses who were admissible by the rules of the common law.

“Case of Mildenhall Encount: act of parliament; otherwise in the case of the London judicatory.”

87. I cannot well make out this comparison; but only remember that the Mildenhall case was upon the title of Sir Henry North,¹ lord of the manor and a cavalier, against the populace of the town, touching a right to an allotment upon the division of the common fens; the townsmen distinguished it from common, by calling it their *sola et separabilis pastura*. It was tried before Hales in the Exchequer; and in that case he did not allow the sentence of the commissioners to be conclusive; but upon the London commission of settling rights after the fire, he ruled it was so, though both stood on equal height, viz., the act of parliament. That, as I take it, is the inconsistency here noted. But to do him right, though he leaned as much as he could to end the cause with advantage on the popular side, he never would say that such a custom to exclude the lord who had no profit otherwise was good in law; but rather the contrary. But here the lord of the manor had no benefit of his opinion; but for fear of worse was constrained to go off upon a reference; for the ill consequence, by offending if he refused, made the compliance necessary.

“*Ac etiams*, in the Common Pleas, condemned, when used in the King’s Bench, and the case but altered.”

88. The secret of this matter depends on the history of the two courts, the King’s Bench and Common Pleas, striving for jurisdiction or rather increase of business; which will be found more largely treated of elsewhere. The court of Common Pleas had been outwitted by the King’s Bench, till his lordship came upon the cushion; and that by an artifice in process called *ac etiams*. His lordship used the same artifice in the process of his court, where it was as good law as above. But Hales exclaimed against it and called it altering the process of law; which very same thing his own court had done and continued to do every day.

“That juries cannot be fined for slighting evidence and

¹ See the case of *Potter v. North*, reported in, *Saund.* 347, 1 *Vent.* 383.

directions, contrary to reason, and the whole course of precedents."

89. This was popular, and the law stands so settled.¹ The matter is trust; whether the court or the jury. The court may abuse a trust in an undue punishment of jurymen as in any other act of justice; and, on the other side, juries may abuse their trust; as, soon after, was done with a vengeance in the scandalous instances of ignoramus juries. The precedents run all for the trust on the side of the court: what reason to change it (which was changing the law) but popularity?

"Foster *versus* Ramsay, against Lord — upon a metaphysical notion hard to the party that lost it."

90. This matter is somewhat dark to me, but if the case be any way reported,² it may be cleared. I think the cause went against the Duke of Lauderdale, his majesty's most loyal and wise commissioner of Scotland; where, upon a point of descent, the Lord Chief Baron Hales distinguished away a right by descent which had been settled by express judgment of law, by the invention of a *mesium differens*, a chimera to serve a turn without reason or authority to warrant it, and never heard of in the law before.

"The case of the Lord Fitzwalter, *pro* Burnham *versus* Touts."³

91. This was a trial for a several fishing of the river Burnham in Essex, which had been taken to have been a common fishing; but it was the title of the Lord Fitzwalter, whose name was Mildmay, a characteristic in Essex. The counsel for that lord made a long deduction of evidence by offices *post mortem*, charters, pedigrees, and divers matters of record. When they had done, the Lord Chief Justice Hales, who carefully went along with them from point to point of the evidence, instead of calling on the other side to give an answer, fell to eulogising the evidence given calling it over and over a noble evidence. This his lordship thought not the office of a judge, to com-

¹ See Bushell's case, *Vaughan's Reports*, p. 135. *Howell's State Trials*, vol. vi. p. 999.

² It is reported in *Ventris*, vol. i. p. 413, under the name of Collingwood *v.* Pace, and in several other reports of the time.

³ Reported 3 *Keb.* 242. 2 *Lev.* 139. 1 *Mod.* 105.

mend an evidence before the other party was heard. It gave a prejudice with the jury; and what matter was it to the right whether the evidence were noble or not? The countrymen, on the other side, by an ignoble prescription might have a better title.

“Case of Sir William Drake, presumptions, very strong evidence prevailed till deed found, then deed prevailed, Earl of Peterborough had not that good fortune.”

92. I have no report, and cannot account for Drake's case. But remember a trial at the King's Bench bar, between the Lord Peterborough and his brother the Lord Mordaunt, before the Lord Chief Justice Hales.¹ The earl's title depended on a deed of which only a copy could be produced, but it was very strongly to be presumed to be a true copy, for it had been delivered out to be perused by counsel and admitted on all hands to be a true copy; and this long before any such question, as at the bar, could be dreamt of, above thirty years before; and it had remained in the gentlemen's hands ever since, as it was showed, and unaltered. One would think, after such length of time and other circumstances, this might have been admitted as evidence of the deed; no, it was not proved expressly to have been examined with the original. But it seems in Drake's case, presumptions or less evidence in case the deed had never been found, would have done as well.

“Marriage of Quakers found specially at Guildhall.”

93. This was gross in favour of those worst of sectaries;² for if the circumstances of a Quaker's marriage were stated in evidence there was no colour for a special verdict; for how was a marriage by a layman without the liturgy good within the acts that establish the liturgy? The slur in such cases used to be this. In evidence a cohabitation and owning the children as man and wife, passeth without entering into the question of the right, that properly belongs to

¹ Reported 1 *Mod.* 94. 114. 3 *Keb.* 1.

² “A Quaker being sued for his wife's debts while sole, insisted that his marriage was not legal, not being according to the rules of the Church of England; but Hale declared ‘that he was not willing on his own opinion to make their children bastards, and gave directions to the jury to find it special;’ as he had undoubtedly a right to do. ‘He thought all marriages made according to the several persuasions of men, ought to have their effects in law.’” (*Life by Burnet*, p. 70.)

another jurisdiction. But here, though the right was debated and could not be determined for the Quakers, yet a special verdict upon no point served to baffle the party that would take advantage of the nullity.

“Soams *versus* Bernardiston, opinion asked ; but when he could not govern according to his will, slighted, and went on.”

94. This relates to his making that trial a table case in Serjeant's-Inn hall. The manner of it was this. When Mr. Attorney North moved to arrest the judgment against Bernardiston with a vigour that needed some aid to repel, Hales, who was sensible that the objections were weighty, had a mind to implant his notions in the rest of the judges before whom it was possible the cause might come, by writ of error, to be determined anew ; for he could least of anything bear that his judgment should not prevail. And one day at dinner, when the cause was adjourned in Serjeant's-Inn hall, he put this case to his brethren the judges and serjeants present and, as his way was, to his questions he annexed his reasons before he took their answer ; for those reasons might possibly lead them into his opinion : and then his sentence in court had been adorned with the adjunct of the opinions of the serjeants' bench ; to whom (as sometimes is done) the case had been put. But, upon the proof, divers of the other judges and serjeants were of an opinion different from his, and some doubted and thought it a case that deserved to be better considered, and very few were clear with him. Upon this disappointment he thought fit to slight them all and made no more words about it. Else their opinions had been quoted in court, or at least put under a prejudice against a writ of error should come ; of which Hales had a prophetic foresight.

“Atkins's case, whether a privilege the king had enjoyed for a hundred years were a monopoly. Reversed by parliament, and liberty of arguing denied.”

95. This was the case of the law patent, by which the king's patentees claimed the sole printing of law books. This was by Hales adjudged a monopoly. But upon a writ of error brought in parliament, the lords reversed the judgment without solemn argument. I remember, about

that time it was commonly said in Westminster Hall, that the best reason the judges had to make that patent a monopoly was that they might have the benefit of printing their own reports.¹

"Scroggs's case of serjeants in Common Pleas."²

96. Sir William Scroggs, when he was a practising serjeant, was arrested by a King's Bench process, and he pleaded his privilege as a serjeant at law attendant on the Common Pleas to be sued only in that court, and by bill and not *capias*, as officers of the court are proceeded against. But Hales disallowed it; and it was thought very injurious to the coif and against all authority of precedent and usage.

"Success of applications, on the contrary party."

97. This was touched before; and was when a courtier carried his cause by getting one, as from the king, to speak to Hales as for his adversary.³

98. Here I have done with this very great lawyer, the Lord Chief Justice Hales. And I must not part without subjoining my solemn protestation, that nothing is here set down for any invidious purposes but merely for the sake of truth; first, in general, for all truth is profitable; and, secondly, in particular, for justice to the character I write of against whom never any thing was urged so peremptorily as the authority of Hales, as if one must of necessity be in the wrong because another was presumed to be in the right. These two chiefs were of different opinions in matters of private right, as well as touching the public. And if one were a Solomon, saint, and oracle, what must the other be taken for? Therefore I have understood it absolutely necessary for me, as (assisted with his lordship's own notes) I have done, to show Hales in a truer light than when the age did not allow such freedom, but accounted it a delirium or malignancy at

¹ Upon the subject of the king's prerogative to grant the exclusive privilege of printing certain books, see the cases collected in *Viner's Abridgement, Prerogative*, (D. c. 2,) and the case of the Stationers' Company v Carnan, in *Sir W. Blackstone's Reports*, 1004. The decisions on this subject during the reign of Charles II. throw considerable light upon the character and bias of the courts of justice at that period.

² Reported in *Freeman's Reports*, vol. i. p. 389.

³ *Ante*, § 81.

least, not to idolize him : and thereby to manifest that he had his frailties, defects, prejudices, and vanities, as well as excellencies, and that he was not a very touchstone of law, probity, justice, and public spirit, as in his own time he was accounted ; but that some that did not agree with him might have those virtues as eminently in the eye of a just observer. This is the only consideration that moved me so freely to display the matters foregoing, wishing only that I had means or ability of doing it with more punctuality. I conclude with this observation, that it is a general error of the community, learned and unlearned, when a man is truly great in some capacities by the measure of them to magnify him in all others, wherein he may be a shallow pretender. But it is the office of a just writer of the characters of men to give every one his due, and no more.

99. I should earlier have mentioned a great piece of service his lordship did to his college, that of St. John's, in Cambridge ; whereby they were enabled to recover a considerable estate, which they had laboured in seven years' suit for and had been always baffled. It happened that when the fellows were about to give up the cause and to look no more after it, it came into one of their heads to propose they should make one experiment more, which was to consult their little fellow-commoner (as they used to call him), who after a circuit or two and other dealings in the country, was reputed the hopefulest young lawyer in England. This was agreed to and they went to him. The history of the cause was this. There was a grave old gentleman that had a title to an estate ; but it was of that nature as could only be recovered by a writ of right ; and accordingly, by advice of counsel, his writ was sued out and the summons given. The defendant appeared and pleaded to issue by battle (which law was then, and is yet in force, though obsoleted), the consequence of which was that the plaintiff must either fight or find a champion to fight for him, or else his cause would be adjudged against him for his default and he be barred for ever. The good man was of opinion that it was utterly against the law of God to join, or to hire any one to join, in mortal battle for worldly interests ; and so he let his writ go. But in

his last will (taking himself to have a right still) he gave the land to St. John's college for ever. And he declared his gift to them to be in trust and confidence that they would use all their interests and endeavours, to obtain of the parliament a repeal of that ungodly trial by battle. After this will proved and known, the college went to counsel and proved divers ways of law to come at this estate; but all in vain, as was said before. When they attended his lordship with their compliments of the great assurance of his skill and integrity in advising them, having been educated in their college, he told them plainly they had not taken one right step; for as they had proceeded the law was every way against them. But if they caused an information or bill in Chancery in the name of Mr. Attorney General to be preferred, as for having the benefit of a pious and charitable use (in all which the crown is interested, and may by the attorney in that manner call for a due application of it) the court, by virtue of an original jurisdiction of charities, will decree it, and no battle nor other impedimental forms of law shall stand against that equity. They took the course he directed and obtained a decree for the estate, which they hold at this day and have owned his lordship's good advice to them as the greater benefaction of the two. This counsel now would seem no great reach; because that course is become more frequent: but, before that time it was a learning that lay out of the common road and had been very rarely practised; and I presume it might be gathered by his lordship, in his dealing under Sir Jeffry Palmer; for there is little directly in the books tending to it.

100. I shall recite no more of these particular cases wherein his lordship signalized himself, but proceed to another head; and that is, conveyancing. I can with assurance say, that he was no less expert at that sort of practice than any one of his time, although professing no other. And he dispatched a great deal, especially of the most intricate kind that is settlements in noble families who entirely relied upon him. And in these are commonly found so many entails, trusts, terms, powers, jointures, rents, &c. that it is very difficult to clear the way to come at a new settlement; and then to compile it so as to

answer all the ends and exigencies of the families will always require a workman. But besides his knowledge of the law gained by reading he had, as I must always remember, the benefit of many useful notions and hints from Sir Jeffry Palmer, not one iota of which was lost upon him.

101. He had a comprehensive turn of thought and a dexterous application of it to the subject before him ; and he always crept as near to the truth of things as was possible ; and as he had a great command of language and words he had also a judgment to choose the most apt and intelligible, and withal a natural clearness of disposition and method ; all which, as I said, rendered him a conveyancer inferior to none. At the beginning of his business he had no clerk and not only drew but ingrossed instruments himself and, when he was in full practice, he scrupled not to write any thing himself. A lady in Norfolk told me he made up some agreements for her ; and at the sealing a bond was wanted, and there was no attorney or clerk at hand to draw it, so they were at a stand : and then he took the pen, and said, "I think it will not foul my fingers if I do it myself ;" and thereupon he made the bond and it was sealed. I have often heard him complain of the community of the conveyancers, and say that some of them were pack-horses and could not go out of their road. After his bar practice grew up to ingross his whole time and the business of the crown in Westminster Hall began to lean upon him, he only superintended in the conveyancing province ; leaving searches, perusals, and extract-making to others that he thought fit to recommend and, after he had directed, took the finishing to himself. By this way of committing clients to certain practisers on whom he could rely for the working part, he helped them into credit and business ; and particularly one Mr. Thomas Syderfin (an author of reports) was introduced and, under his lordship and in very important concerns in some families, relied on.

102. This Mr. Syderfin was a Somersetshire gentleman and proved a very good lawyer, as the book two volumes in folio of Reports of his shows. But he was not a better lawyer than a kind and good-natured friend ; having very

good qualities under a rustic behaviour and more uncouth physiognomy. He used at the Temple to be described by his hatchet face and shoulder of mutton hand, and he walked splay, stooping and noddling. His lordship used his conversation chiefly for his assistance in matters of law, wherein he was of great use and service to him. For when his multiplicity of active business would not allow him to consult in cases that he wished well to, as well for friendship and relation as for fees, he usually substituted Mr. Syderfin to consult the books for him as he himself had done before for Sir Jeoffry Palmer. And this leading the persons concerned to attend him by Mr. Attorney's direction, they, finding him industrious, careful, and learned, continued to use him as their immediate counsel in other smaller concerns, wherein Mr. Attorney was not concerned; which brought him into very considerable business as well in conveyancing as at the bar. For his probity and exact justice to his clients was a great recommendation of him; for he had no tenters to hang their dependences upon to make them drop fat, as some have had and done. But he died before his friend Mr. Attorney was made the chief of the Common Pleas; else it is probable he might by his means have been taken into the wheel of preferment. The only thing which I ever heard him blamed for, was the marrying a lady that was his ward before her minority was expired; which by the world's allowance makes her entirely capable to dispose of herself. And it seems an ill use made of a trust and the authority of a guardian, to take advantage of a minor's being a great fortune much above him and anticipate her free choice by influencing her to marry him. But the lady had no cause to repent; for he was so good a man as could not but make her happy; and that probably young as she was she was satisfied of, by experience of his general behaviour towards her and others; which might make her determine so early. For she had a very good understanding, and had occasion to serve herself of all her thinking and judgment under an immense misfortune that befel her when she was a widow. For, being a great fortune, one Sarsfield ran away with her and carried her over into France where, by the greatest accident, the abuse was dis-

covered and the raptor seized, she protected and both sent home; and the former, upon her most ingenious relation of the fact, sworn in a trial at the King's Bench bar, convict and punished.

103. His lordship having taken that advanced post, and designing to benefit a relation (the honourable Roger North,) who was a student in the law and kept him company, caused his clerk to put into his hands all his draughts, such as he himself had corrected and after which conveyances had been ingrossed, that by a perusal of them he might get some light into the formal skill of conveyancing. And that young gentleman instantly went to work, and first numbered the draughts and then made an index of all the clauses referring to that number and folio: so that, in this strict perusal and digestion of the various matters, he acquired not only a formal style but also apt precedents and a competent notion of instruments of all kinds. And to this great condescension was owing that little progress he made, which afterwards served to prepare some matters for his lordship's own perusal and settlement.

104. It fell out that his lordship, by a cast of his skill in this kind, prevented his father's being utterly disappointed of the effect intended by his last will: for the good lord had the general notions of the law as many others have; who nevertheless, coming to the execution of business, blunder most abominably. And it is very strange but very true, that if a layman (as the lawyers style those not bred to the profession) studies the law never so hard, and pursues in a course of reading and common-placing with all imaginable perseverance, yet he shall be far from competent to judge of or capable to direct in business. So this good nobleman, intending to give his lady all his personal estate free from debts and legacies and to charge those upon his land, and (subject, &c.) to settle it strictly upon his family, had contrived thus. He made his wife his executrix and charged debts and legacies upon the land, and limited it especially on his sons and their issue male successively without trustees to support, &c. When this was done, he bethought himself that, however in prudence it did not become him to trust his nimble young lawyer to draw his will and so

give him an opportunity to steal in somewhat for himself unawares to him, yet after the will was made he ought not to secrete it from so great a lawyer as he was. And thereupon he sent for him and, with a speech, let him know that however (for reasons that satisfied himself) he was not consulted in the making his will, yet now he should see it. But he must not expect to alter one tittle or syllable in it; for he had considered it so well that he should not need, if he were disposed to trust, his advice. His lordship perused it over, and his father asked him how he liked it. He answered with a question, whether he intended that Lady North should have any thing of his personal estate or nothing. "I intend her all, and have," said he, "given it her by making her sole executrix." That was his skill. But the lawyer told him "That would not do, but only in cases where no debts were: And charging his land did not ease his personal estate, unless it were made an express legacy with a declaration to exempt it. For the heir had an equity to turn all debts upon the personal estate in ease of the land; and the latter should not be charged until the other was exhausted." This was news to the lord and made him start. Then the lawyer asked farther, if it was his intent that any of his sons might sell his estate and frustrate their own children and the rest of his remainders. "No," said he, "I intend none of them shall sell." "But here they may," said the lawyer, "for the remainders to sons before any born, are contingent; and a feoffment or fine of the tenant for life destroys the contingencies, and his estate become a fee simple." These discoveries made such an impression upon the spirits of the old lord, that he said, "Son, you see my intent, go and make it as it should be." Which was done and, as things fell out in that family, that action of his lordship's was a preservation of the estate and prevented the good old lady from being left destitute; who otherwise had been left without a bed to lie on but what she must have purchased by anticipating her jointure. So it is when men will pursue in professions they were not educated in.

105. We have now from a plain king's counsel got a solicitor general, who in some respects is co-ordinate with the attorney, that is in drawing up and passing royal grants

which are to go to the great seal. As to patents of honour indeed, those are, as I take it, claimed by the attorney to pass only by him ; but else, the signet warrant may go to the solicitor as well as the attorney as the suitor will please to instance or prevail at the secretary's office. His lordship did not like this competitory business but secured his share as well as he could, not only by considering well his duty and the trust of that employment and what cares belonged to it, but by using Mr. Johnson to be his clerk of the patents who had done all like business under Sir Jeffry Palmer : and his reputation and interest brought many patents to the solicitor, which otherwise had not come ; for he was reputed to have a magazine of the best precedents.

106. During his solicitorship his lordship kept his public reading in the Temple hall, in the autumnal vacation, in the year [1672]. He took for his subject the statute of fines, and under that found means to exhaust all his learning upon that branch of the law which concerned titles and the transferring them : and the arguers against him did their parts also, who were the best lawyers of the society in that time. As for the feasting part it was sumptuous and in three or four days time cost one thousand pounds at least.¹ The grandees of the court dined there and of the quality (as they call it) enough ; for his diffused relation, general acquaintance and station, as well as prospect of his advancing in the king's service, made a great rendezvous of all the better sort then in town at his feasts.

107. He sent out the officers with white staves (for so the way was) and a long list to invite ; but he went himself to wait upon the archbishop of Canterbury, Sheldon ; for so also the ceremony required. The archbishop received him very honourably and would not part with him at the stairs' head, as usually had been done ; but, telling him he was no ordinary reader, went down and did not part till he saw him pass at his outward gate. I cannot much commend the extravagance of the feasting used at these readings ; and that of his lordship's was so terrible an example, that I think none hath ventured since to read publicly ; but the

¹ For an account of the readings and the reader's feasts, see *Dugdale's Origines Juridiciales*, p. 207, and *Herbert's Inns of Court*, 237.

exercise is turned into a revenue and a composition is paid into the treasury of the society. Therefore one may say, as was said of Cleomenes, that in this respect his lordship was *ultimus heroum*, the last of the heroes. And the profusion of the best provisions and wine was to the worst of purposes, debauchery, disorder, tumult, and waste. I will give but one instance ; upon the grand day, as it was called, a banquet was provided to be set upon the table composed of pyramids and smaller services in form. The first pyramid was at least four foot high with stages one above another. The conveying this up to the table, through a crowd that were in full purpose to overturn it, was no small work : but, with the friendly assistance of the gentlemen, it was set whole upon the table. But after it was looked upon a little, all went hand over head among the rout in the hall, and for the more part was trod under foot. The entertainment the nobility had out of this, was, after they had tossed away the dishes, a view of the crowd in confusion wallowing one over another and contending for a dirty share of it.

108. It may be said this was for want of order ; but, in truth, it was for want of a regular and disciplined guard of soldiers ; for nothing less would keep order there. I do not think it was a just regulation when, for the abuse, they took away such a profitable exercise. But in England it is a common way of reforming even in state matters, instead of amending or paring away what is amiss to kick down whole constitutions all at once, however, in themselves, excellent. Could not the whole proposition of feasting have been laid aside and nothing but ordinary commons allowed ? But as to the exercise, now it is gone we can see the want of it ; and never more want than now, when statutes of broad influence upon the people's concerns are so frequently sent out from the parliament. It was the design of these readers to explain to the students the constructions that were to be made upon new statutes, for clearing a way that counsel might advise safely upon them. And the method of their reading was to raise all imaginable scruples upon the design, penning, and sense of such new acts as they chose out to read upon, and then to give a careful resolution of them ; as we may see done in those readings that are

in print. But now there is scarce a lawyer so hardy to advise a client to try a point upon a new statute whereof the event is at the peril of costs, and sometimes ruin of a poor man that pays for the experiment; for how can the counsel foresee the judge's sentiments? and how contrary to his advice they may prove? As for instance, upon the law of distress and sale for rent,¹ some have said it is to divest property and, so far in nature of a penal law, and ought to be construed strictly. Others have said it is a remedial law and ought to be enlarged by construction. And who doth not know the wide difference in the consequences of law in some points, upon these various grounds of constructions? Now if a previous reading had been had upon this statute, saving better judgments, it had been declared a remedial law and to be construed in favour of remedy. And, probably, a single judge, at the assizes, would not have opposed his sentiment against the learned determination of a reader so solemnly and publicly held forth (as, at these exercises, in the inns of court is done), which counsel at the bar in nice questions at law are allowed to appeal to for authority. But as the case is now, till some hardy client hath pushed his point upon some new provisional law to a trial and obtained a resolution on his side; or else, to his immense costs (which properly converts it to a penal law) finds that he is in the wrong, counsel care not to advise a law-suit or to give a clear or positive opinion in any questionable matter arising upon such a new law.

109. It may be wondered at that, as his lordship was so great a lover of regularity, we hear nothing all this while of his matching himself. To that I answer, that no person could be more disposed that way than he was; and it was about this time that he made his first essays towards it; and, for that reason, I think this a proper place to bring forward an account of them, as I intend to do of all his lordship's concerns and reflections, as well of those in which himself alone was interested as others which might affect and influence the public; such as matching, residences, fortunes, entertainments, reflections, doubts, melancholies, confidences, with his arts of governing himself and

¹ Stat. 2 Will. and Mary, Sess. 1. c. v. s. 2.

his passions. And although I may by this means introduce many passages, which, to some, may seem of lower importance than what are proper to have place in a life of so great consequence, yet I am almost of opinion that most persons will look into such a catalogue as readily as any other in the whole undertaking. If the history of a life hangs altogether upon great importances such as concern the church and state, and drops the peculiar economy and private conduct of the person that gives title to the work, it may be a history and a very good one; but of any thing rather than of that person's life. Some may think designs of that nature to be, like the plots of Mr. Bays, good only to bring in fine things: but a life should be a picture; which cannot be good if the peculiar features whereby the subject is distinguished from all others are left out. Nay, scars and blemishes as well as beauties ought to be expressed; otherwise it is but an outline filled up with lilies and roses. And to this intent, what I have to produce here will be found more conducing than all the incidents of state, law, and justice, to be found in the other parts of the work; and that will engage me to be more solicitous and declaratory than elsewhere.

110. After he was called to the bar, he applied himself closely to the attendance and operations of the law and wanted refreshment, such as was reasonable to be enjoyed at vacant times; and he was weary of being at the loose hand as to company, which he could not have at all times to his mind. He was no clubster listed among good fellows; and often passed his evenings in walking or solitary (if it may be so termed, when he had only me with him) rather than join in any promiscuous society, or of such as were not either in his friendship or distinguished by some notable talents that recommended them. And he thought it would be an ease to his mind to know continually, after his business done, what was to become of him; and that he thought best provided for by a family and housekeeping; which is never well settled without a mistress as well as a master of a family. These consideration inclined him to look out for a suitable match. And, to say truth, his constitution required it as much as any man's whatever; but being excessive modest and by resolution virtuous, he

was solicitous and ardent in the pursuit of it and not a little encouraged by a manifest feeling he had of success in his profession, which dismissed all fears of the lean wolf. And not being insensible of a fair character in general which, together with some quality and happy relation that fell to his share, he fancied he might pretend to as good a fortune in a match as many others had found who had less reason to expect it; but without some advancement in that way he was not disposed to engage himself.

111. That which sat hardest upon his spirits was, how he should give a fair answer to the question, "What jointure and settlement?" He used to own but one rood of ground in the world that yielded him any profit, which was Westminster Hall: a meagre particular unless he might have added, as Finch did, his bar gown £20,000. There came to him a recommendation of a lady who was an only daughter of an old usurer of Gray's Inn, supposed to be a good fortune in present for her father was rich; but after his death to become worth nobody could tell what. His lordship got a sight of the lady and did not dislike her: thereupon he made the old man a visit and a proposal of himself to marry his daughter. There appeared no symptoms of discouragement; but only the old gentleman asked him what estate his father intended to settle upon him for present maintenance, jointure, and provision for children. This was an inauspicious question; for it was plain that the family had not estate enough for a lordship and none would be to spare for him. Therefore he said to his worship only, "That when he would be pleased to declare what portion he intended to give his daughter, he would write to his father and make him acquainted with his answer." And so they parted, and his lordship was glad of his escape and resolved to give that affair a final discharge and never to come near the terrible old fellow any more. His lordship had at that time a stout heart and could not digest the being so slighted; as if, in his present state, a profitable profession and future hopes were of no account. If he had had a real estate to settle, he should not have stooped so low as to match with his daughter: and thenceforward despised his alliance.

112. His lordship's next amour was in all respects better

grounded ; but against all sense, reason, and obligation, proved unsuccessful. When Mr. Edward Palmer, his lordship's most intimate and dear friend, died, he left a flourishing widow and very rich. The attorney general and all his family had projected a match of their cousin North with this lady, who were no strangers to each other : nor was there wanting sufficient advices or rather importunities of the whole family for her to accept him ; against which she did not seem to reluct but held herself very reserved. In the meantime his lordship was excited to make his application ; which he had never done, or at least not persisted so long as he did, but out of respect and compliance with the sense of that worthy family which continually encouraged him to proceed. Never was lady more closely besieged with wooers : she had no less than five younger brothers sat down before her at one time ; and she held them in hand as they say, giving no definite answer to any one of them till she cut the thread and, after a clancular proceeding and match with a jolly knight of a good estate, she dropped them all at once and so did herself and them justice. There were many comical passages in this wooing which his lordship, without much pleasantry, used to remember ; and, however fit for a stage, would not muster well in an historical relation ; for which reason, as his lordship was dropped, I drop them. The unhappiness was that he never could find out her resolution as to him ; for she stood in some awe of Sir Jeffery Palmer's family, and would not break with them till she had provided for herself another interest ; and his lordship would not slight their excessive kindness to him by deserting his post at which they had placed him : so, between the one and the other, he was held at the long saw above a month doing his duty as well as he might ; and that was but clumsily, for he neither dressed nor danced when his rivals were adroit at both ; and the lady used to shuffle her favours amongst them affectedly and on purpose to mortify his lordship ; and at the same time be as civil to him with like purpose to mortify them : and his lordship was not so mystified by his amour as not to discern these arts ; and nothing but the respects I hinted could have held him in harness so long. For it was very grievous to him that had his thoughts upon his clients'

concerns, which came in thick upon him, to be held in a course of bo-peep play with a crafty widow. And I have heard him often say, that he never was in all his life more rejoiced than when he was told that madam was married; whereby he was escaped from a miserable confinement. And the fastidium upon this occasion contracted and his increase of business, which gave him little time to think of anything else, diverted his mind from undertaking any more such projects; and so he went on his way.

113. Another proposition came to his lordship, by a city broker, from Sir John Lawrence,¹ who had many daughters and those reputed beauties; and the fortune was to be £6000. His lordship went and dined with the alderman and liked the lady, who (as the way is) was dressed out for a muster. And coming to treat, the portion shrank to £5000 and upon that his lordship parted, and was not gone far before Mr. Broker (following) came to him and said, Sir John would give £500 more at the birth of the first child; but that would not do, for his lordship hated such screwing. Not long after this dispatch his lordship was made the king's solicitor-general, and then the broker came again, with news that Sir John would give £10,000. "No;" his lordship said, "after such usage he would not proceed if he might have £20,000." So ended that affair; and his lordship's mind was once more settled in tranquillity.

114. It is said that marriages are made in Heaven; and if frequent and unforeseen accidents (often to be observed productive of them) are any argument the proverb hath countenance; for so it happened in his lordship's case: for out of a contingent interview a proposition sprang, pregnant with all advantages of honour, person, and fortune; more than which was not to be desired or expected. And it was for a match with the Lady Frances Pope, the middle daughter of three co-heirs of Thomas Earl of Down, who lived at Wroxton in Oxfordshire. The eldest was married to Mr. Soams, of Thirlow in Suffolk, within four miles of Catlidge the seat of his lordship's father. And, as the use is, the grave Countess of Down with her two younger

¹ Lord Mayor in the year 1665.

daughters attended the new-married couple to their habitation and made some stay there; during which time the visits of joy came in and, amongst the rest, the family from Catlidge made their appearance; and the countess and her daughters in due time made their return, which happened to be at a time when his lordship was at Catlidge. His mother laid her eyes upon the eldest unmarried daughter and, when they were gone, turned about and said, "Upon my life, this lady would make a good wife for my son Frank. And in short, at the next visit, with his lordship's fair consent she moved it to the countess, who consented that his lordship might make his advances. His next business was to muster what sums of money he could in order to make an honourable proposition; and, with £600 borrowed of a friend, he could compass but £6000 in all to join to her fortune, which was esteemed at £14,000 for making the jointure and settlement intended to be £1000 per annum. After this, he ventured down with a decent equipage and attendance and, in less than a fortnight, fixed his point with the lady and appointed another time to come and finish what was so auspiciously begun. And then his lordship went with full attendance and some friends; and, after the necessary writings were sealed, the lovers were happily married in Wroxton church. [5th March 167½.] But I well remember the good countess had some qualms and complained that she knew not how she could justify what she had done (meaning the marrying her daughter with no better settlements); "Madam," said his lordship, "if you meet with any question about that, say that your daughter has £1000 per annum jointure." It is certain that (besides some private reasons the countess might have) the friends of the family looked upon this as a very desirable match, not on account of an estate in present but of much greater, little less than certain, to come; for his lordship was solicitor-general; and I may say a favourite of the law and his character unexceptionable, besides his family which was styled honourable.

115. It is not easy nor very material, to describe the feasting and jollities that were in the country round about upon this occasion. It was a cavalier country and the Popes eminent sufferers for their loyalty in the late wars:

and his lordship having the like character, and known to be an obliging as well as a flourishing loyalist, there was scarce a family which did not show all respect imaginable to the new married-folks, by visits, invitations, and festival rejoicings. So that it was about three weeks before his lordship could clear himself of these well-intended importunities. At length we decamped for London; and his lordship took first lodgings, and then a house, and lived consistent with his business in a way most agreeable to him. It was wondered that this lady, being such a fortune, had no separate maintenance assigned her. I believe the true reason was that, considering his lordship's known good-nature and honour, they thought there would be no need of it, and it would as a distrust have disoblighed him to have mentioned it; and I am partly certain he would not have agreed to it: and in the same family the younger sister was matched with a large separate maintenance. And to show how little such provisions (except in extreme cases, the supposition of which, almost in possibility, is sufficient to divert a match) signify, a lady, though suffering in her person for want of reasonable supplies, never profited the least by it; but upon expostulation the answer was, "Get you to your trustees." But for certain the Lady Frances Pope was matched into the land of plenty; and in saying that I have said all.

116. These ladies' fortunes consisted in estates of inheritance, come to them by descent as coheirs under certain settlements in the family to be made good by a due execution of several fines and recoveries formerly had. The Lady Eliz. Lee set up a pretence against them as heir general let in by failure of issue male; and suits being commenced and ready for trial, his lordship, being then counsel for the Lady Lee (thoughtless of his future concerns) was at a consult preparatory to a trial the next day, which was to determine once for all whether these ladies should be great fortunes or worth nothing at all; and perhaps be found in debt for their charges and living in the interim. And the whole board (as I may call it) agreed in opinion that their client, the Lady Lee, had no title at all. But the trustees for the ladies were towards the law; and, being wonderfully scrupulous, had a different notion

and, considering the consequence that might be fatal to the ladies, advised a composition; and in the morning before the trial attended her ladyship to know her pleasure; and she furiously protested she would have half. This was a severe sentence but yielded to; and afterwards the estates subject to this question were sold and the money divided, of which his lordship came into his wife's part: and he used merrily to say, "He had been a counsel against himself." And if this question had not come to such a composition, which diminished the ladies' fortunes, he had never compassed his match.

117. His lordship by the means of his brother-in-law Mr. Robert Hyde, settled himself in the great brick house near Serjeant's Inn in Chancery Lane, which was formerly the Lord Chief Justice Hyde's; and that he held till he had the great seal and some time after. And when he came to settle in this house, he considered his oeconomy and what method to put it in: he appointed his trusty clerk in chief to pay all bills weekly and keep all his expensive accounts. This gentleman not only kept his books fair but had vouchers to every item. And it was well for his lordship that he did so; for one Bransby, an upholsterer, brought in a bill of £200 for furniture supplied two years before; excusing himself that he knew his lordship's pay was good and not needing the money he was content to let it lie in his hands. His lordship believed he was paid; but that was no answer, so referred him to his clerk, who, looking back found his bill and the acquittance in full. Then, "Good lack! his man had forgot to cancel his book." He supposed that his lordship had not such regular accounts; and then tradesmen take the advantage and are paid double.

118. When his lordship lived in this house, before his lady began to want her health, he was in the height of all the felicity his nature was capable of. He had a seat in St. Dunstan's church appropriated to him, and constantly kept the church in the mornings. He had the esteem of the royal family and of all the loyal and conformable people in the nation. His house was to his mind; and having, with leave, a door into Serjeant's Inn garden, he passed daily with ease to his chambers dedicated to

business and study. His friends he enjoyed at home, but formal visitants and politic ones often found him out at his chambers. Those were proper and convenient for all his purposes ; but the ascent to them was bad : and, being scandalized at the poorness of the hall, which was very small and withal ruinous, he never left till he brought his brethren to agree to the new building of it ; which he saw done with as much elegance and capacity as the place would admit of, and thereby gained a decent avenue with stone steps to his chamber, as may be seen at this day. His lordship procured to be done another good work, which exceedingly improved the dwellings in all Chancery Lane, from Jackanapes Alley down to Fleet Street. He found in his house a small well in the cellar into which all the draining of the house was received ; and, when it was full, a pump went to work to clear it into the open kennel of the street. But during this pumping the stench was intolerable, and offended not only his lordship but all the houses in the street and also passengers that passed to and fro in it. And other houses there which had any cellars were obnoxious to the same inconveniences. His lordship proposed to them to join in the charge of making a drain, or sewer, all along the street deep enough to discharge into the grand common sewer in Fleet Street. The inhabitants would not join, alleging danger to their houses and other frivolous matters, and thereupon his lordship applied to the commissioners of sewers and obtained a decree, by virtue of which it was done whether they would or no, and the charge paid by a contribution levied upon them ; and then they thanked his lordship as for a singular good done them. Which is an instance showing that the common people will be averse to their own interest till it is forced upon them ; and then be thankful for it.

119. But, amidst all these comforts, his lordship's happiness was not a little curtailed by the bitterness poured into his cup from his lady's sickness, which began about the year 1674, and, at last, brought her to her grave ; for he had so much good-nature as to resent all her pains as if they were personally his own. Of all the three daughters of the Countess of Down she had the least good

health; but about the time of her match she was very flourishing and well.

120. When this lady began to appear infirm, his lordship, for the advantage of better air which was thought beneficial for her, took a country house in Hammersmith where in the mild times of the year she resided. And he came to her every evening and repaired to London in the morning, as his business required. And in his circuit time, he left her there with all fitting company and attendance. But her distemper, which was a violent cough attended with a spitting of blood that followed upon the abatement of an acute fever she had had but just before, proceeded from bad to worse; and at length his lordship went with her to Wroxton and, saving the necessary attendances at London, was continually with her. There wanted not doctors and apothecaries in those parts. She had Dr. Triss, a neighbour, and Dr. Danvers from Northampton, almost continually with her. But the distemper exasperated till, it was manifest, she could not last many weeks, and soon after a large blood-vessel being broke by a violent fit of coughing it carried her off. It was his lordship's good stars that forced him to London about a fortnight before she died; for every one knows what offences, nay hazards, a nearness to persons that expire gradually in such consumptions induceth; for he would not be absent from her more than was consistent: and when she must expire, and probably in his arms, he might have received great damage in his health.

121. After this good lady was dead, care was taken (in his lordship's absence) for her interment, which was performed in the chancel of Wroxton church near the rest of her family, with attendance and in manner honourable and according to her quality. His lordship ordered a black marble stone to be laid upon the place, and afterwards a monument of white marble to be put in the wall, being an oblong semi-urn upon a large face of a cube with this inscription composed by Dr. Henry Paman,¹ sometime orator of the university of Cambridge, who was not only writer but (knowing her well) a witness of what he penned, viz.—

¹ See Autobiography, § 144, n.

Diem hic denuo oriturum & decretorium
 Præstolatur lectissima Fœmina Domina FRANCISCA
 Illustrissimi Domini FRANCISCI NORTH Equit. Aurat.
 Capitalis Communium Placitorum Just. Uxor.
 Magna & inclyta utroque Parente,
 Patre THOMA Comite apud Hybernos Dunensi,
 Matre Filia HENRICI POOL in Agro Gloc. Baronetti,
 Fratre itidem THOMA Comite pariter Dunensi,
 Eoque defuncto cum duabus sororibus Cohæres.
 Virtute tamen longe ditior quàm Dote,
 Utpote cui Pietas sine fuco, Gravitas sine fastu,
 Sine Levitate Comitas, & grata ubique Amœnitas,
 Modestia autem & Pudicitia etiam in Uxore virginalis.
 Lentâ hic Ægritudine detenta quasi tremula pensitabat
 An potius præmissis Liberis POPIO & FRANCISCA
 Se denuo statim adjungeret, an tenellos superstites
 FRANCISCUM, ANNAM & CAROLUM molli adhuc sinu foveret.
 Maritus mœstus hanc Mortem tam acerbe tulit
 Ac si ipse ambiret

Hoc igitur in Memoriam Conjugii, per sex Annos & quod excurrit
 Felicissime transacti, summo Dolore & Pietate posuit.

Obiit 15 Nov^{ris} Anno { Salutis MDCLXXVIII.
 { Ætatis suæ XXXI.

122. It may be thought that this monumental inscription hath too much of the panegyric. And I confess the practice is modern: for the ancients affected the greatest brevity and titles only expressed in letters and syllables: and I have heard the great Sir Christopher Wren say, that he did not like epigrams upon stone. And here perhaps the commendatory part had been better left out, because it is in the power of every cobbler to use the like. But as to the account of families, which makes the greatest part of this for the sake of pedigree they cannot be too much extended. In former times, offices post mortem and the heralds' office preserved the notice of births, matches, and descents, which (saving the dark parish registers) are not ordinarily discoverable to after-times otherwise than by sepulchral inscriptions. As here his lordship's match with a daughter of Thomas Earl of Down is remembered, with their five children, Francis, Pope, Anne, Charles, and Frances, whereof Pope and Frances died young and the three others survived their mother.

123. After this funeral was over, his lordship's great concern was how to dispose of his three surviving children; and he found means to do it amply to his satisfaction.

For his mother, an excellent lady a compendium of charity and wisdom, took home to her his two sons, Francis, afterwards Lord Guilford, and Charles; and she placed them at school in the neighbourhood, and was wanting in nothing of maternal care and nurture of them while she lived. And the daughter Anne was accepted by his lordship's sister the Lady Wiseman, afterwards Countess of Yarmouth, who resided then at Chelsea; where also was a good school for young ladies of quality which was an advantage. His lordship did not live to see them grow up to a full age, but so fairly advanced as if he had no reason to doubt their doing well; and so it proved. After the good Lady North's death, he removed his eldest son to Winchester school for his better education, but left his younger in Suffolk where some neighbouring relations had an eye over him; for he was very valetudinary. His lordship by his will committed the guardianship of these minor children to his three surviving brothers, and settled the remainder of his estate after the deaths of his two sons without issue upon them, *which was a singular and great trust and it was no less justly and honourably performed.*

124. His lordship served as a member of the House of Commons but in one parliament, which was that called the Long Parliament, for when he was solicitor-general, it was thought fit that with the first interest that could be made for him he should be chosen. And it fell out opportunely enough that by the death of Sir Robert Stuart, as I remember some time recorder of Lynn Regis in Norfolk and then burgess for the town, that place fell void; and none could make a fairer pretence to stand for that election than Mr. Solicitor-General; for what with his being commissioner for dividing the fens and judge of the Isle of Ely, and what with his constant circuits and eminent practice in town and country, he was not only esteemed but popular in all those parts: and there was yet more to complete his interest there; for this vacancy happened during the Dutch war, and the town had need of a court interest to procure convoys and guardships for them, which Mr. Solicitor effectually did. The Lord Shaftesbury was Lord High Chancellor and carried it high in

appearance for the prerogative. The character and history of which noble person, and an account of his sending out undue writs in vacation of parliament, are so fully displayed in the *Examen* that it is needless to mention it here.¹

125. His lordship did not approve of this practising novelties with the parliament and was afraid of what happened, but conform he must. When it was made known at Lynn that his lordship intended to stand for burgess, the magistrates intimated that they would serve him with their interest; and other encouragements he had: and before the writ came down he made the town a visit, and regaled the body with a very handsome treat which cost him above one hundred pounds; and they complimented him highly with assurances of all their interests, which they doubted not would be successful against any opposition but they believed there would be none. He was made free, and had the thanks of the body for his favourable assistance in procuring them convoys, &c. So far

¹ It has been remarked, that a complete Life of the Earl of Shaftesbury is still a desideratum in our historical literature. Locke had formed an intention of becoming the biographer of his noble friend, and it is much to be regretted that he only carried his project into partial execution. Ample materials for such a work existed some years ago in the hands of Lord Shaftesbury's family; and, as we are told in *Dr. Kippis's Biographia*, vol. iv. p. 264, "a gentleman distinguished for his accurate acquaintance with the history of England" was intrusted with these documents, for the purpose of preparing a life of the celebrated nobleman to whom they related. See also *Dalrymple's Appendix*, p. 325. Subsequently, we believe, the papers came into the possession of Dr. Kippis, and on the dispersion of his library were unfortunately lost.

It appears from the *Memoirs of James II.* (vol. i. p. 651) that Lord Shaftesbury at one period entertained the whimsical notion of offering himself as a candidate for the office of Lord Mayor. *Alderman* Shaftesbury, indeed, was a name which he had acquired by his city intrigues. "They (the Earl of Shaftesbury and the Duke of Buckingham) joined in becoming citizens. The Earl had a great house in Aldersgate-street: the duke had one at Sion Hill, for the more security of their trade, and convenience of driving it amongst the Londoners; so that in raillery they were called *Alderman* Shaftesbury and *Alderman* Buckingham." (*Reflections on Mr. Le Clerc's Life of Mr. John Locke*). This was not the only *sobriquet* applied to his lordship; the King and the Duke of York used to call him *Little Sincerity*, while, with others at court, he went under the title of "Lord Shiftesbury."

was well: and when the writ was sent to the Sheriff of Norfolk, his lordship's engagements were such that he could not go down to the election himself but sent a young gentleman, his brother, to ride for him (as they call it), and Mr. Matthew Johnson, since clerk of the parliament, for an economist of which there was need enough. The rule they observed was to take but one house and there to allow scope for all taps to run. Nor was there need of more for, as had been foretold, there was no opposition, which was a disgust to the common people for they wanted a competition to make the money fly; and they said Hobson's choice was no choice. But all passed well, and the plenipos returned with their purchase, the return of the election, back to London.

126. The parliament met and at the very first the new members were attacked; for one stood up and recommended it to their modesty to withdraw while the state of their election was under debate; as they did and were soon dismembered by vote of the house; as is more fully related in the aforesaid Examen. But thereupon the speaker's warrants went to the great seal and new writs issued. This caused his lordship to dispatch his plenipos once more on the like errand to his majesty's ancient borough of Lynn Regis. At first all things seemed fair; but the night before the election there was notice given that Sir Simon Taylor, a wealthy merchant of wine in that town, stood and had produced a butt of sherry, which butt of sherry was a potent adversary. All that night and next morning were spent in making dispositions for conduct of the interest and such matters as belong to a contested election. But the greatest difficulty was to put off the numerous suitors for houses to draw drink, of which every one made friends to insinuate in their favour as if the whole interest of the town depended upon it. But these gentlemen plenipos determined to take no other house but where they were, to let the quill as well as the tap run freely, which made an account of above three hundred pounds. After the election and poll closed, all the chiefs on both sides met to view the poll-books; and Sir Simon Taylor, being on his own knowledge of the people's names satisfied that the election was against him, called for the

indenture and signed it with the rest. This was an act of generous integrity scarce ever heard of before or since, and is what I have on all occasions mentioned for his just honour, and it would be strange if I should leave it out here. And it is material also; for, when his lordship came into the house, being a very good advocate and generally well thought of, the party there styled of the country thought his sitting in the house might be an accession to the court interest of too much consequence to be let pass if it might be hindered; and accordingly they expected a petition (as almost of course) to come in against him, and an opportunity thereupon to try the experiment of heaving him out of the house: for at that time who would not prove a petition against a declared courtier? His lordship was generally acquainted and passed well with the gentlemen of all sides. But, in the house, none of the country party came near him or cared that he should speak with them. So it passed till the fourteenth day; and there was but fifteen days of liberty to petition. Then one of them ventured to welcome him into the house but asked if his election was not like to be questioned. "No," said he, "it cannot be for my adversary signed the return for me." Within an hour or two after, at least twenty more of the same interest came and saluted him as very well pleased with his company; as much as to say, "Since thou art chose, who would not have it so?"

127. His lordship sat in the house till he was made attorney-general: and then the same good friends began to discourse of his incapacity of sitting as a member of that house, there being an order as they said against it whereof the reason was that the attorney is of course an assistant of the House of Peers.¹ This was enough to engage his

¹ Whether the attorney-general, being an assistant of the House of Peers, was entitled to a seat in the House of Commons, was formerly a subject of much debate. In 1614, a committee having been appointed to search for precedents, the House of Commons resolved that the then attorney-general should for that parliament remain; but that no attorney-general should in future serve as a member. In 1620, 1625, and 1640, new writs were ordered in consequence of the office of attorney-general being conferred on a member of the house. (See *Hatsell's Precedents*, vol. ii. p. 18, second edition.) The attempt mentioned in the text (which is not alluded to by Mr. H.) appears to be the last which was made to exclude the attorney-general from the House of Commons.

lordship to search that matter to the quick, as he did, that he might if put to it not be tempted to say anything without book and that he might give his friends that were members just notices of the grounds of the pretence. But the country party never ventured upon the point; for, in truth, they had not that advantage as they pretended. So now let us pass on to find his lordship in the attorney-general's place, which fell out upon the promotion of Sir Heneage Finch to the great seal. But before this there had been a notable time; for the king was beset by a double-visaged ministry, half papist and half fanatic, who co-operated in mischief, the former to favour their party and the other to ruin the king. The Lords Clifford and Arlington of the former and Bucks and Shaftesbury of the latter party. And the game lay by soothing up the king and pushing him on in designs of advancing his prerogative. And they took, or made, some colours by the Dutch war and other necessities of the crown. Hence proceeded the stop of the Exchequer, commission of martial law, enjoining actions against the bankers, indulgences against law, and huffing the parliament; as the histories of that time (if true), but particularly the Examen, will demonstrate. But these parties had different aims, the popish really to enhance the king's power in order to have the sway of it on their side; the other, to loosen the king from the affections of his people and so directly to destroy him. They saw the crown in mighty credit and interest with the parliament, and that it was capable of being destroyed only by high flights of arbitrary power: for a few difficulties, such as great occasions and little supplies, being once brought upon the crown, to be followed (as they supposed) by either his majesty's truckling to the parliament or else using violence for money, would soon bring it under: and upon this scheme they pushed hard.

128. After the stop of the Exchequer, whereby the bankers fell exposed to actions at law, the point was to get the Lord Keeper Bridgman to enjoin those actions. He had been a celebrated lawyer, and sat with high esteem in the place of lord chief justice of the Common Pleas. The removing him from thence to the Chancery did not at all contribute any increase to his fame but rather the contrary,

for he was timorous to an impotence and that not mended by his great age. He laboured very much to please every body, and that is a temper of ill consequence in a judge. It was observed of him that if a cause admitted of divers doubts, which the lawyers call points, he would never give all on one side but either party should have somewhat to go away with.¹ And in his time, the court of Chancery run out of order into delays and endless motions in causes, so that it was like a fair field overgrown with briars. And, what was worst of all, his family was very ill qualified for that place; his lady being a most violent intriguess in business and his sons kept no good decorum whilst they practised under him, and he had not a vigour of mind and strength to coerce the cause of so much disorder in his family. He boggled at divers things required of him, and particularly stopping the lawsuits against the bankers by injunction and the commission of martial law; although at that time there was colour for it by a little army encamped on Blackheath. And there was a meeting of the attorney and solicitor general at his house; where it was agreed that these were rocks they must all split upon if they could not be avoided. The Lord Shaftesbury took advantage of this difficulty and, as was supposed, by undertaking to do whatever the Lord Keeper Bridgman refused, got him removed and slipt into his place. But all these fine doings came to

¹ A similar character of Sir Orlando Bridgman is given in the *Memoirs of James II.* "The seal was given to Sir Orlando Bridgman as Lord Keeper, who was, until some time after he had it, looked upon as a very honest and able lawyer, but upon trial proved to be too weak for so weighty an employment. (*Life of James II.* vol. i. p. 429.)

In the *Examen* North has given an account of these transactions. "There were some shrewd difficulties to be got over; one was the Commission of Martial Law; another, an injunction to be granted in Chancery to stop suits at law against the bankers, upon the equity of public necessity. The Lord Keeper Bridgman was pressed, but proved restive on both points. He, for the sake of his family, that gathered like a snowball while he had the seal, would not have formalised with any tolerable compliances; but these impositions were too rank for him to comport with. I remember, about this time, there was at his house a meeting of the attorney and solicitor-general, and some of the king's counsel, to consult upon these points; and they all agreed they were rocks upon which they must split, if they could not otherwise decline them, for they lay directly in the way, and would not be surmounted." (p. 38.)

nought. The king agreed with the ensuing parliament; and then the Lord Shaftesbury, pretending for saving himself, to turn into the discontented party, in the consequence of affairs showed himself to be, at bottom, an utter enemy to the king and his family; and so in truth he continued with remarkable perseverance all the days of his life. But his whole history the reader will find particularly related in the *Examen*.

129. After he was turned out and Sir Heneage Finch placed in his room, the king asked his new Lord Keeper whom they should have to succeed him? He answered, "Who should succeed the captain, but the lieutenant?" And thereupon his lordship was made the king's attorney-general. Of which passage his lordship has left the following note:—

"Finch, lord keeper, attorney, and Sir William Jones, solicitor."

130. Here his lordship skips over the Earl of Shaftesbury who had the seal not much more than nine months. This change did not affect his lordship, so he passed it by in his catalogue. He was well pleased with his successor; for he knew the ability of the man and how well, for that reason, he was entitled to the place. And he thought it a credit to the king's affairs, when men most eminent for learning and dispatch of business in the law were taken into his majesty's service. His lordship was so far from retaining any offence at what was past, that he readily went in with the promotion of Sir William Jones. And if he had not consorted with a party diametrically opposite to the interest of the crown, his lordship had joined in amity with him, and gone hand in hand in consults and transacting what belonged to their offices; which (as the modern course is) are nearly co-ordinate. But such different aims as they had could not but make a fissure which would not be closed.¹ And thereof, and the consequences, some account may be given elsewhere; and is already related in the *Examen*.

131. His lordship's acquisitions by practice while he attended only the King's Bench, had been very consider-

¹ In the *Examen*, p. 515, North says, "these two lived very fairly, without trouble or offence to each other upon account of different opinions or otherwise, for divers years together."

able; but after he, as king's counsel, came within the bar he began to have calls into the court of Chancery; which he liked very well, because the quantity of business as well as the fees, was greater; but his home was the King's Bench where he sat and reported like as other practisers. And when his practice was greatest in Chancery, he hath come as an officer and sat on the bench, under the judges by the prothonotary. His business increased even while he was solicitor to be so much as would have overwhelmed one less dexterous; but when he was made attorney-general, though his gains by his office were great they were much greater by his practice; for that flowed in upon him like an orage, enough to overset one that had not an extraordinary readiness in business. His skull-caps, which he wore when he had leisure to observe his constitution, as I touched before, were now destined to lie in a drawer to receive the money that came in by fees. One had the gold, another the crowns and half-crowns, and another the smaller money. When these vessels were full they were committed to his friend (the Hon. Roger North), who was constantly near him, to tell out the cash and put it into bags according to the contents; and so they went to his treasurers Blanchard and Child, goldsmiths at Temple-bar. This same telling the money was a great trust; and he was satisfied of the integrity of his friend wherein he was confirmed by a very little accident: for while they were walking together that young gentleman, newly come from telling his money, accidentally feeling in his coat pocket startled and said, "Here's a half crown," (supposed by accident to have slipped in there) but it proved only a piece of glass. His lordship, from the manner of that behaviour, concluded his friend to be (as he was) most strictly just to him.

132. After the death of Sir Jeffry Palmer, his lordship had the advantage to come into his chambers which were very commodious, having a gallery and at the end a closet with a little garden. This served him to walk in and turn about with a friend continually interchanging discourse, than which no entertainment better pleased him: for that helped him to form his notions and to test them upon those of his friend. But his greatest content was that

they afforded an accommodation for his brother from Cambridge,¹ when he thought fit to come to London, so near that he could at any time go from his business to him and return to it again when he pleased ; which was a practice he very much delighted in and used. Such intercourse, though with persons raw and little experienced in affairs, he liked better than to be wholly alone ; for he considered that, if he did not learn he taught ; which to him was near as well : for as he, being young, had received great benefit by the advices and instructions of his betters, so he desired to profit others coming up under him with the best counsel and information he could give them. He never lay there but always went home to his family, and was seldom an evening without company agreeable to him. Nothing was difficult but his attendance upon and dealing with the court. His modesty, and diffidence, and infinite cares not to slip or commit any absurdities in that captious nation made him uneasy, sleeping and waking. Those who are so far from knowing what is fit to be done as to profess hatred of all business, which was pretty nearly the state of the court at that time, will yet prescribe to such as have reason to know better and will not allow them the liberty of being explained without being also accounted morose and unfit for the court. So that his lordship lived in a perpetual stretch as to his behaviour there and, with all that, did not come off wonderful well ; or at least he thought he was often not well used : for he was continually tormented with rascally projects and the unreasonable importunities of great men (usually) at the heels of them. Besides a sort of falseness and treachery he observed in most of the court made him decline having any attachments to any of their interests ; but made it his rule to serve the king and the legal government of England with all the fidelity and skill he had, and to do nothing that was not justifiable by law nor make himself obnoxious to any persons who might, for his principles (which were always loyal) malign him. And, however the profits were great and he was satisfied of the good opinion the king had of his judgment and fidelity (besides that the Lord Keeper

¹ Dr. John North, Master of Trinity College.

Finch and the chiefs of the law were mostly his friends and did not know of any slips he had committed) yet, always fearing the worst, he was weary of his post and wished for another in a calmer region though less profitable. And, among all the preferments of the law, his thoughts fixed upon the place of lord chief justice of the Common Pleas;¹ for he knew his own skill in the law so well as to be assured he was not unfit for it; and chose it the rather because the business was wholly matter of pure law, and had little to do in criminal causes or court intrigues; and he could answer for the rigid integrity of his determinations. And in the intervals of business in that station which were constant and copious, he should have more time and latitude to expatiate in entertainments that were agreeable to him, and settle himself in a way of living at ease with his family and enjoy his friends with more satisfaction. Upon which account, although he could not expect to receive so much there as in the attorney's place by 2000*l.* per annum, yet he would have been glad so to have purchased his ease.

133. As to the affairs transacted in parliament, his lordship had no great difficulty; for little or nothing of the king's business in the House of Commons leaned upon him, because Mr. Secretary Coventry was there who managed for the court; and no man was ever better qualified for that post: for he was an ancient member and had the nice step of the house, and withal was wonderfully witty and a man of great veracity. He had never said anything in the house which afterwards proved a lie; and had that credit there, that whatever he affirmed the house believed.² After

¹ But, according to the *Examen* (p. 515), "that place is the most desirable of any for a good lawyer to retire into; for the profits are great, and the court not harassed with causes criminal, touching the Crown and Government, as the King's Bench is, of which the chief justice always desires to be preferred downwards to the other." It appears that the profits incident to the office of Chief Justice of the Common Pleas were less, at this time, by 2000*l.* per annum, than those made by the Attorney-General. (*Ibid.*)

² Sir William Coventry was the youngest son of Lord Keeper Coventry. In 1662, he was appointed a Commissioner of the Admiralty; in 1665, a Privy Counsellor; and in 1667, a Commissioner of the Treasury:—he died in 1686. Burnet calls him "a man of the finest and best temper that belonged to the court." (*Own Time*, vol. i. p. 449.) He

he was gone the court lost ground ; for there came forward a sort of people called Undertakers ;¹ for the court was negligent and did not think of the parliament till within a month of their meeting, and then were in a hurry how to order matters. Whereupon, some one or more of the court party in the house who had a good opinion of their own skill usually stepped in, and undertook for the management of the king's business that sessions ; and his majesty need not be farther concerned at present. And this kind of service in the overture was always acceptable ; especially in a place where all kinds of business was uneasy, that is in his majesty's court. But the house always found out who were their guardians and sponsors to answer for them : and such never failed, through their indiscretions, presumptions, importunities, subterfuges, or tricks, to give advantage against themselves ; and in a few days commonly were routed horse and foot. And then there was no way but to quit them and agree with the more friendly part of the house. All which must be readily owned by such as remember Sir William (or Sir Francis) Wheeler, to name no others, managers for the king in the House of Commons. When there is a set of honest gentlemen, as there was in that Long Parliament, nothing loses them so much as disingenuity and underhand dealings. For the adverse party contrive to expose them with satirical reflections, and make those honest gentlemen almost ashamed of their own party. No other was to be expected but that his lordship should be entirely for the interest of the crown ; not so much upon account of his place, for that never carried him into any indirect action, but from his judgment of which I have given an account elsewhere. And he was so far from losing his interest with his friends by his behaviour there that he became more firmly allied to them, for his sense was commonly theirs. He could not attend the house con-

is accused of malice by Clarendon, in his life by himself. See more of him in the *Memoirs of Pepys*, *passim*.

¹ This was not a new term. When Clarendon selected some persons "of great experience and known ability to confer with, for the better preparing and conducting of what was to be done in the House of Commons," they "feared to undergo the odious name of *Undertakers*, which in all parliaments hath been a brand." (*Life of Clarendon*, vol. ii. p. 354.) The name appears to have had its origin in the reign of James I.

stantly, but took the liberty of pursuing his practice in Westminster Hall. And, being there, what he did was occasional, and consisted chiefly in resolving the fallacies of the country party: whom to oppose in gaining the point of a money bill and answering to the artillery of grievances, which were always erected and pointed at the money designs, was the chief of the court employ in parliament till about the time of Oates's plot, when the country party went off with all at once. But long before that time his lordship was removed into the Common Pleas [A.D. 1673] and Mr. Coke of Norfolk succeeded him in the burgess-ship of Lynn, but not so easy and cheap; for his managers did not keep in due bounds but let loose the tap all over that large town, and made an account of £7000 or more resting due to the town, besides what had been paid for the expenses. Sir Simon Taylor opposed, and thought he had the return, and being resolved to petition was courted by the Earl of Danby at the price of all his charges, which were not trifles, to forbear, as he did, else his lordship's son-in-law, Coke, at that conjuncture had been turned out.

134. Whatever his lordship signified to the court interest during the time he sat in parliament, it is sure enough that he served himself by improving his knowledge of men and their ways in great assemblies. And the arts of driving are no where so eminent as at the committee of elections. And it were well if all gentlemen that come to such public employments would observe these arts; but with a sort of contempt and scorn and not think them matter of imitation; or, indeed, any arts so to be but what tend to favour truth and justice. It was not without reason that the best orators of the ancients determined that a man could not be a good orator, unless he was an honest man. For art is a good engine to subdue ignorance or malice; but to support the latter against justice is not an art, but a diabolical subtilty.

135. In the process of this stage of his lordship's life, his condition was like that of a plant set in a proper soil, growing up from small beginnings into expanded employment; so much that one would think it scarce possible for one man to find time to dispatch the affairs of it. One help he had, which was good servants, when he had most need of them. Mr. Matthew Johnson, one bred in the

office of clerk of the patents, was in that province, and Mr. Robert North for his chief clerk, viz. for the confessions and other affairs of trust. And when business of titles of estates came to him, he often recommended his clients to some industrious and able counsel; as was before observed. His lordship's great labour was to get time to be instructed well in causes of great consequence, as trials at the bar and hearings in Chancery; and, for that work he took the fresh of the morning. He had a very trusty boy, who never failed winter and summer to come into his chamber at four in the morning. He could, over night, just and but just, admit his clients and their agents; and, being informed by them in the history of the cause and where the pinch was, he was then prepared next day to peruse his breviates and the papers left with him; which was impossible to be done for one whilst others waited without. The office of attorney hath little or no vacation; such continual attendance on the court did that office require. But he was more capable of conforming to it, because, being then married, his habitation was in or near the town and he had no country concerns to call him from thence. But, till his lady came with him to London, he kept no house in town but ordinarily dined in the Temple; that is, at noons in the hall and at nights in his chamber; where the ordinary commons with a bottle or two was a regale to him, and two or three constant friends with him. But that was like the Harpies' supper, by snatches, for he could seldom get many minutes to enjoy himself and his friends; such was the importunity of his business. But yet he took great pleasure in those little liberties; and he was not pleased when he had not at least a third man (for I was always one) to help out his single bottle, and for fail used to send for a choice friend or two. He used to say that a glass of wine, to sedentary persons was equivalent to exercise. He could never sit up late; for he must be up early. And after dinner a short turn in the other world was not only an exceeding refreshment, but almost necessary to him; for his constitution required more sleep than many others needed.

136. Such was his lordship's course of life during his celibacy; absolutely void of all manner of vice, excess, and incontinence: of which I am yet a living witness that scarce

was ever from him but in the very employ of business. I do not remember that he so much as took the air in his coach without me ; and so when he dined or supped abroad, unless with grandees of one sort or other, I was with him. He never was in danger of being overtaken with wine to excess from his own seeking ; but only when confined to company, especially of superiors, and that was very seldom and so far as clipping only ; for he had strength of head to bear a great deal. He was always sensible of this infirmity coming upon him, and could curb his speech but not his merriment as I have observed already.

137. After he was married and his lady come to town, he became a house-keeper ; but used lodgings for a considerable time, till he could accommodate himself with a house ; which at length he did to his content in Chancery-lane, as has been related. His course of life was now much altered from what it was ; but all for the better, as well in all kinds of accommodation as the regularities of life which he greatly affected. In this state he kept a plentiful but very plain table and had great resort of his friends to him ; at dinner sufficient but much more at supper : for then he was more loose from business and company was most acceptable to him. And he consequently held to his custom of eating suppers, and counted it the best refreshment he had in the four and twenty hours. And how he diverted himself with his family when alone, will be showed elsewhere.

138. I cannot vary his character much in this stage from that subjoined to the former, only now he had a superiority and his thoughts were ever intent upon methods for rectification and improvement, wherever his views extended. And as he had profited extremely by the encouragements in his studies he had received from others, so he did what he could to administer like advantages in study to such as came in his way to instruct : instances of which good will I shall take occasion particularly to relate elsewhere. The state was not very much roiled with faction, till he was taken from practice to the seat of justice and had more latitude to divert himself with ingenuities ; such as music, philosophy, painting, mechanics, and the like ; which, in the absence of strangers, were the subject of his domestic conversation, as will appear in proper place.

139. He had acquired in this busy time of life a general skill in the European languages, as French, Italian, and Spanish. And now he fell, last of all, upon Dutch and was very desirous to make himself master of that. His friend Sir Peter Lely (of whom elsewhere) had inspired him with an inclination to it; telling him what sumptuous libraries they had, and magnifying the elegance and significancy of his country dialect; and, as if there needed no other books to make men exquisite scholars and politicians, he recommended to him a voluminous collection in folio called *Saken van Staten*; such a sort of book as our Rushworth: And, in order to gather this part of the *belles lettres*, he got a Dutch Bible and used to carry it to church. To be short, in his greatest flow of business he let slip no opportunity of improving himself, as well in the law as in other valuable accomplishments. He had a very good memory but never trusted it with his independent remarks; which made him (as I have said elsewhere) so given to note all useful occurrences; for of such matters multitude confounds the remembrance. So necessary is it to have, as it were, a basket to put them in. And this he did with no less constancy and application after he was judge, nay, lord keeper of the great seal, than when he was a student or minor practiser. He was also a dexterous index-maker: if he procured any good law-book in manuscript, which he thought worth the reading over, he certainly made an index to it; but every notable discovery or light in the law, derived upon good authority, he crowded into his solemn common-place book. He would not reflect with himself that he had once got but now had lost any thing.

140. Come we now to the third division of his lordship's life, which commenced from the time he was advanced to the post of Lord Chief Justice of the Common Pleas;¹ and that was soon after the death of the Lord Chief Justice Vaughan.² Of this preferment his lordship has left the following note.

¹ In Hilary Term 1674; see the ceremony of his appointment in *Freeman's Reports*, vol. i. p. 187.

² Sir John Vaughan died in 1674. He was the intimate friend of Selden (who dedicated to him his *Vindiciæ Maris Clausi*), and, in his

“Lord chief justice without soliciting.”

141. I have mentioned that his lordship grew weary of the attorney-general's place and why, and how much he desired a quieter post and particularly that of the Common Pleas. Now we have it intimated here that his desires were accomplished; for, upon the death of Vaughan the chief in that court, his lordship was looked upon on all hands to be the fittest person to succeed him. His lordship had but one scruple which made him a little deliberate about his acceptance; and that was the difference of profit; for the attorney's place was (with his practice) near seven thousand pounds per annum; and the cushion, of the Common Pleas, not above four thousand pounds. And so far the reason wrought upon him, that he would expect that the offer of it should be made him; and that he would not seek although, for cogent reasons, he much desired it; but, if such offer came, he was determined to accept it: and if the court should use him so ill as not to give him such proffer he should not be very much mortified. But, accepting, he should account himself enfranchised from the court brigues and attendances and other labours of his practice, at the price of the difference.

142. One thing fell out unhappily in this affair; which was a necessity to cross the desires of a near relation for whom he had no slight respect; and it was Sir William Mountagu, one of the Boughton family, his lordship's mother's cousin-german. Sir William pressed with extreme earnestness that his lordship would give way that he might obtain that place, alleging that some of his ancestors had been in it. And he teased with a world of such weighty reasons to induce his lordship to refuse it; and, after that, he said he doubted not of obtaining the place. All that his lordship said to him was, that he would not sue for it; but if it was offered he must hold him excused if he accepted it. This did not suffice; and Sir William took it desperately ill of his lordship that he would not, for his sake, decline it. Such compliments are a little too costly to be expected how near soever the relation is; and,

early life, of Lord Clarendon, who has not, however, drawn a very amiable character of him. (*Life of Lord Clarendon*, vol. i. p. 32.)

in such cases the ill manners lie in the asking and not in refusing when asked. But this incident bred no ill humour between these two noble relations. Sir William was made lord chief baron of the Exchequer;¹ and his lordship, while chief justice of the Common Pleas, lived in perfect amity with him; and he had a due respect for his lordship while they lived together. It is neither unlawful nor undecent for relations to be competitors; but to suffer rancour and ill will to grow thereby is a sign of an upstart and degenerate race. But persons of honourable families, as these two were, will as they did be careful in fortifying their friendships so as no unlucky event may corrupt them.

143. His lordship forebore sitting in court for divers days, to the end that such causes as had been agreed by the court might receive judgment without farther argument. And then his lordship sat constantly, according to the duty of his place. The court (answering the title Common Pleas) was placed next the hall door, that suitors and their train might readily pass in and out. But the air of the great door when the wind is in the north is very cold, and if it might have been done the court had been moved a little into a warmer place. It was once proposed to let it in through the wall (to be carried upon arches) into a back room which they call the Treasury. But the Lord Chief Justice Bridgman would not agree to it, as against magna charta, which says that the Common Pleas shall be held *in certo loco*, or in a certain place, with which the distance of an inch from that place is inconsistent; and all the pleas would be *coram non iudice*. Although at the same time, others thought that the *locus* there means the villa only, so that the returns being *apud Westmonasterium*, the court might sit on the other side of the abbey and no solecism of jurisdiction happen. But yet that formal reason hindered a useful reform; which makes me think of Erasmus, who having read somewhat of English law, said that the lawyers were "*doctissimum genus indoctissimorum hominum*."

¹ He was removed in Easter Term 1686, (*Shower's Reports*, vol. ii. p. 471,) in consequence of his refusal to support the dispensing power.

144. It seems that in old time the business of the court was very great, because the offices are numerous. So it appears at this day in the Chancery, that the clerks are multiplied. First, the six did all the work that originally might be done by a single secretary; and then their clerks that rose to ten a-piece, mere copiers under them, have got to be officers and thirty more added to them. And still all of them have clerks, who may in time hope to be officers too and beard their masters, as they do the six clerks. The cursitors made out process *de cursu*. Special writs are *magistralia*. The masters in Chancery are twelve. The cursitors are by counties; these are the lord chancellor's. The philazers and exigenters are by counties also and are of the Common Pleas. The prothonotaries are three now, as it were co-ordinate, but grew up with the business; for it seems at first there was but one as in the King's Bench. He was the proper officer of the court who was to enter up the replications, rejoinders, rebutters, &c. (pronounced in law French) upon the record in Latin, and not by paper books brought in by attornies with serjeants' hands, as now the use is. But yet the fees are taken as if the prothonotary did all, as his office required, by himself. If a serjeant said "judgment," that was a demurrer; if "prist," that was an issue to the country; and the form belonged to the prothonotary. But then the crown would needs have a peculiar prothonotary, who should take care of the king's profits and rights that arise in or come before the court; and then, who should deny him acting in all causes as the others did? These were so busy they had no time for paupers; so another prothonotary crept in upon charity, that the paupers who could not pay fees might be dispatched. And now, of all these it is hard to know which is which. They have their secondary clerks and ride in coaches all alike; and, being a co-ordinate three, are no small nuisance to the searching business. The chief justice hath the disposing of the officers of the court; but, at the admission, the other judges not caring to see the pudding creep and have no share, expect to be attended; the consequence whereof is a small present. I have observed that upon change of some officers there were bickerings against this power of the chief justice, in a

manner aristocratical ; as if placing of officers was the act of the court, in which they sat as judges in parity of voice with his lordship, and were also alike trusted in the approbation of fitness or to that purpose.

145. He is the keeper of the records and makes the returns of writs of error, and puts in a clerk of the treasury where the records are kept ; which is of considerable value. When his lordship came into his place he found the clerkship of the treasury in grant to the Lord Berkeley. The crown had granted that place divers times, but it was always resisted by the chief justices, who insisted upon the nomination to the place not more by a prescription than from the nature of it, being the office and charge of the chief justice and the clerk his deputy for whom he is to answer ; and that the patent was void in law, as it was also for the nomination to other offices that the chief justice claimed by prescription. Upon this contest with the Lord Berkeley, in consideration he was a deserving person and it would not be well taken to be severe with him, his lordship let go about half the profits and, naming his own clerk, allowed the Lord Berkeley five hundred pounds per annum while he lived. But, after his death, his lordship gave way to no patentee if there was any ; and if a patentee had claimed he would not have allowed it. How that matter hath gone since I know not. His lordship always searched to the bottom of authority and reason in every thing he undertook, which was relevant and above the common notion of things ; as will appear by the next instance of an important alteration he made and succeeded in.

146. Notwithstanding this long catalogue of officers, his lordship found the court ill supplied with business to keep them all employed ; for, as matters had been ordered in Westminster Hall, the court of King's Bench went away with much the greatest share of the suits promoted by London writs ; and the proper court sat idle and had scarce enough to countenance their coming to Westminster Hall every day in the term : and it was thought that if the country attornies, who were most of the Common Pleas, had not by taking apprentices continued a succession of such as brought their business to that court, it had been

utterly deserted. This may seem wonderful but really so it was: for the two courts being upon terms of competition, the King's Bench outwitted the Common Pleas: and it was by gaining an easy way of holding to special bail upon *latitats*; for plaintiffs are commonly very outrageous and love to turn the first process (by a barbarous abuse of special bail) into an execution, which ought to come after execution and be the last. And the Common Pleas was rightly served; for they thought to exclude the King's Bench by getting an act of parliament that none should be held to bail unless the cause of action was expressed in the writ. That was done of course in the original writs returnable in the Common Pleas; but not in the King's Bench whose the process of *latitats* was, viz. *in transgressionem super casum*. There the Common Pleas thought they had nicked them. But the King's Bench was not so sterile of invention as to want the means of being even with that device; and therefore they added in their writs *ac etiam billæ* to the *transgressionem super casum* (for instance) *centum librarum*; and then, said they, the cause of action is mentioned in our writs. This was advantage enough over the Common Pleas; for their originals were finable: and not so expedite to be put in due form as the common *transgressionem super casum*; for, upon that, the party being (as the style of the court is) *in custodia marescalli* may declare for any cause of action whatever. The late chief justice Sir Orlando Bridgman and his officers of the Common Pleas gave this way of proceeding by the King's Bench very ill language, calling it an arbitrary alteration of the form of the legal process and utterly against law. But the losers might speak; they got nothing else; and the *triccum in lege* carried it for the King's Bench; which court, as I said, ran away with all the business.

147. In this melancholy state his lordship found his court of Common Pleas when first he sat there; and his mind was much taken up with speculations concerning it, and deliberating whether or no a way might be found out to set themselves upon a level (at least) with the King's Bench as to common pleas. He thought it hard that the court instituted for such, should be deprived by a court that was instituted for pleas of the crown; and that it was

a shame to be outwitted. He did not see but they had as much power over the process of the law as the King's Bench had; and, at last, determined to put in execution the same device that they had used, which being good law at one end of the hall would not be against law at the other. And it was by doing the same thing in their writs called *clausum fregits*, upon which a *capias* lies; and after appearance, the plaintiff may declare for debt or *assumpsit*, &c. and filing a proper original at any time, before a writ of error brought, warrants the judgment. This was by adding the same words *ac etiam billæ*, &c. and then they, upon the *clausum fregits*, (without fine or delay) might hold to bail as the other court did upon the *latitats*. But this was not done without very much consideration and weighing all consequences and all objections, and compromising all interests, that the regulation might pass smooth and without opposition from any but the King's Bench, for whom they had an answer ready. For whereas the Lord Chief Justice Hales exaggerated the same objections against the Common Pleas, as Bridgman had before urged against the King's Bench; it was asked how he could criminate the Common Pleas for that which his court had done, and continued to do every day.¹

148. The great difficulties to be got over, were, first, to reconcile the king's interest, and next, the lord chancellor's. The king had fines upon the originals, and the lord chancellor disposed of the cursitor's places that made them out. But his lordship surmounted them by showing that care should be taken (and orders, for that end were effectually established) that originals should be filed where they were necessary, and they were not otherwise filed before; and the *ac etiams* should not take place but in such cases only where a *latitat* would serve. So the officers or the crown did not lose any thing; but on the contrary were like to be great gainers by bringing in flow of business into the court, which would have that effect. For what was got by forcing all suitors to proceed by *latitat* which could produce no original, and so decline this way that sometimes would

¹ See "Sir M. Hale's Considerations touching the amendment of the Laws." (*Hargrave's Law Tracts*, p. 289.)

produce them? And to show the necessity of it, it was made appear that for the ease of arrests and bail even the attorneys of the Common Pleas used the King's Bench writs, by dealing in the names of the proper attorneys of that court. I remember that when this matter began to be formed in his lordship's mind, he thought of using the words *nec non* instead of *ac etiam*; and then the writs for distinction-sake should be called *nec nons*: but at length he thought fit not to vary a syllable; for, however the thing was the same the different sound would serve to quarrel at; and in captious matters it is best to give no handles. I have walked over this alteration of the Common Pleas process (which was wholly owing to his lordship's invention and formation, as it is now practised,) in an historical rather than a legal style. But it is not for want of a good guide; for I have a complete account of it, together with not only the historical part but all the consults, deliberations, and comparisons of his lordship's belonging to it, from his own pen. And though it is of that kind which few but professed lawyers may comprehend, because it falls upon forms and terms of law (each of which needs a glossary to explain it), yet the matter and consequence in his lordship's conduct, by whose skill it was established, was too bulky to be here let pass in silence. After this process came into common use it is scarce to be conceived how the court revived and flourished; being instead of vacation in term rather term in vacation. So large was the increase of trials, by *nisi prius* out of the court, as also of motions and pleas in the court. Not a little of which increase was also owing to the fame and common opinion of his lordship's justice and steadiness in his administrations; whereby counsel would advise, and attorneys assuredly depend upon success, if their causes were sound and good.

149. His lordship made another regulation, which being but a direction of the court without any solemn act or order registered, I will mention here. The allowing *propriums* to the attorneys in taxing of costs was a very great abuse: for if they have their business pass the offices for nothing it is favour enough for them; but if they prevail and recover so that costs are to be taxed, and, in doing that, the officer allows them the cost of the offices which

they never paid, they gain by frivolous suits : for if they recover but one pound damages or snap a judgment against a poor man by a turn of art, they shall not only have costs taxed for what they laid out but for what they did not lay out ; which is clear gains to them out of the purse of a poor man, whether they had reason or not. This was manifestly the cause that attorneys multiplied *propriums* ; out of which by mere costs they made a certain profit. His lordship considered this as an abuse of the privilege of attorneys, and would not permit that they should have any costs allowed which they did not expend : and so the court thought fit to declare to the prothonotaries. But this made almost a mutiny of the officers and attorneys : the latter are always favourites of the former, because they bring grist ; and they clamoured saying that this made the privilege of the attorney become the privilege of the adversary ; and that it indeed destroyed their privilege ; and that if one party must gain by the allowance of it, as formerly, it is more reasonable it should be the attorney than the other party. To this it was answered, that if the attorneys were weary of their privilege they might quit it and be upon the square with other men. But if the court finds their privilege turns to a common nuisance it is high time to take it away. So it stood in his lordship's time : I know not how it hath gone since, whether they have prevailed to get this good order antiquated or not ; nor doth it much concern my present design.

150. There was an incident that happened not long after his lordship came into the place of chief in that court which, though in itself and in the end of it ridiculous, yet being an affront to the court and in particular to the lord chief justice, and by the whole bar of serjeants all in a lump together ought to be related, as I shall do, really as it was acted by them. It hath been the usage of the King's Bench at the side bar below in the hall ; and of the Common Pleas in the chamber within the Treasury, to hear attorneys and young counsel that came to move them about matters of form and practice. His lordship had a younger brother (Hon. Roger North) who was of the profession of the law. He was newly called to the bar and had little to do in the King's Bench ; but the attorneys of the Common Pleas often

retained him to move for them in the Treasury such matters as were proper there, and what they might have moved themselves. But however agreeable this kind of practice was to a novitiate it was not worthy the observation it had ; for once or twice a week was the utmost calculate of these motions. But the serjeants thought that method was or might become prejudicial to them, who had a monopoly of the bar and would have no water go by their mill, and supposed it was high time to put a stop to such beginnings for fear it might grow worse. But the doubt was how they should signify their resentment so as to be effectually remedial. At length they agreed for one day to make no motions at all ; and opportunity would fall for showing the reason how the court came to have no business. When the court (on this dumb day, as it was called) was sat, the chief justice gave the usual signal to the eldest serjeant to move. He bowed and had nothing to move : so the next and the next from end to end of the bar. The chief seeing this, said, "Brothers, I think we must rise ; here is no business." Then an attorney steps forward and called to a serjeant to make his motion ; and, after that, turned to the court and said that he had given the serjeant his fee and instructions over night to move for him, and desired he might do it. But profound silence still. The chief looked about and asked, "What was the matter ?" An attorney that stood by, very modestly said, "that he feared the serjeants took it ill that motions were made in the Treasury." Then the chief scented the whole matter and, "Brothers," said he, "I think a very great affront is offered to us, which we ought for the dignity of the court to resent. But that we may do nothing too suddenly but take consideration at full leisure and maturely, let us now rise and to-morrow morning give order as becomes us. And do you attorneys come all here to-morrow and care shall be taken for your dispatch and, rather than fail, we will hear you or your clients or the barristers at law or any person that thinks fit to appear in business, that the law may have its course ;" and so the court rose. This was like thunder to the serjeants, and they fell to quarrelling one with another about being the cause of this great evil they had brought upon themselves : for none of them

imagined it would have had such a turn as this was, that shook what was the palladium of the coif, the sole practice there. In the afternoon they attended the chief and the other judges of the court and, in great humility, owned their fault and begged pardon and that no farther notice might be taken of it; and they would be careful not to give the like offence for the future. The chief told them that the affront was in public and in the face of the court, and they must make their recognitions there next morning and in such a manner as the greatness of their offence demanded; and then they should hear what the court would say to them. Accordingly they did; and the chief first, and then the rest in order, gave them a formal chiding with acrimony enough; all which, with dejected countenances, they were bound to hear. When this discipline was over the chief pointed to one to move; which he did (as they said) more like one crying than speaking: and so ended the comedy as it was acted in Westminster Hall, called the Dumb day.

151. His lordship was exceedingly troubled with the importunities of great men. As, for instance, the Lord Bruce who had married the sister and heir of the Duke of Somerset, and the Lord Willoughby who married Mrs. Wynn, and divers others whose estates were settled and their sons tenants in tail vested. These persons importuned him to give way, that privy seals, to enable these heirs to join in common recoveries for barring the entails, might take effect; and that recoveries, under colour of those privy seals, might be allowed to pass in court. Several of them had petitioned his majesty and had references to him depending. But his lordship was so averse, or rather positive to the contrary, that they desisted. He alleged that if a guardian, regularly assigned by the court to plead for the infant, would let a recovery pass, they had nothing to say to it. Their only care in such case was not to admit a guardian irresponsible; for the infant had an action or an account against such guardian as for a breach of his trust, but no person of value was willing to venture that. And as for the opinion that a privy seal if the court allowed of it would take away the error, and that a suit for amends to the infant would not lie against the guardian, or that a

guardian that was a beggar might be assigned, they would all fail them; for the privy seal altered no assurance or right, and imported only that the king would not punish his judges for the misdemeanour: and perhaps not that neither; for an illegal licence to the injury of a particular person is void, even against an indictment. "And," said his lordship, "either such recovery of an infant is lawful or not. If lawful, it ought to be let pass by the judges without more ado; and if it is not lawful, the king ought not to be troubled about it." His lordship was not so utterly against this practice without reason; and that settled upon great deliberation and consultation of former attempts and proceedings. For his lordship had caused searches to be made for precedents of recoveries of infants by guardian, and had a long list returned him. It would be well if the judges of the law in all times sworn to act according to "*Magna Charta*," as in the place of majesty, *nulli negabimus, nulli differemus justitiam*, would be as careful of the rights of the subject according to law as his lordship was. What is here alleged of recoveries of infants, is a signal instance on his part that he preferred the duty of his office to all interest at court: and in such cases the courtiers are often furious and (according to the doctrines there) criminative against the judges that are not easy, as being morose, ill-bred, and disrespectful, and scarce to be endured in their places. But comparisons of times, persons, and things, however just, are for the most part invidious; therefore I carry this no farther, but proceed to another eminent instance of his lordship's religious punctuality in the due performance of the duty of his office, wherein any person in the world was, or might be, consequentially interested or concerned. And I have heard him say more than once, that he would have it in his power to swear upon his death-bed that, in all his employments and trusts, he never knew any thing out of order which he did not endeavour to set right as soon and as well as he could.

152. The lord chief justice of the Common Pleas, by virtue of his office takes recognitions of fines out of court which are afterwards recorded in court. But the other judges do it by virtue of a *dedimus potestatem*; but only

their caption is returned and recorded without oath : whereas, where the *dedimus* is to ordinary persons, it is returned upon oath : unless, as they say, there be a knight in the commission ; and in that case it comes in without oath ; which, by the way, being so, is a fair pathway to frauds as to infants and feme coverts. But this advantage of the chief justice brings more fines, in and about London, to be taken by him ; and he hath a clerk called his clerk of the fines. There are, sometimes, frauds in the undue captions and returns of fines which are of great consequence to men's titles ; and although a fine be never so fairly entered and recorded, yet if, upon complaint and hearing of parties, it be found to have passed unduly, the court vacates the fine as if none such had ever been. And, particularly, the chief justice, knowing of any such abuse by what means soever it is, ought, *ex officio*, to call the parties and, after due examination had, do right. Now, when a covetous or needy man had occasion for his wife's land to alien or to reserve for himself, and it happens that the woman is under age and cannot, regularly, settle, then the trick of a surreptitious fine is tried. And there is a strong temptation to it ; which is that, if the woman dies before a fine levied her estate goes away, but if her fine pass during her minority and she lives to be of age all is safe ; for, after full age a writ of error doth not lie for the cause of infancy to reverse any fine : and that for a very odd reason, viz. that infancy is to be tried only by inspection of the person, which cannot be done after full age. Therefore, unless a man gets his wife's fine during her minority he runs the risk of her death before. But yet, even after the full age (as I take it), if the court upon examination find a fraud in the commissioners and that the party was really under age at the time of the caption, they will vacate the record of the fine as unduly obtained and entered, though a writ of error in such case could not be brought to do it.

153. It happened that his lordship came in the way of a discovery of the like practice in two cases. One of them was from a slip in the discourse of an intimate friend, who was at vacant times seldom absent from him. This person was told (inadvertently) by a gentleman of value, that he had obtained of his wife, an inheritrix, a fine during

her minority ; and he (more unthinkingly) spoke of it in his lordship's hearing : and after this, no interest or entreaty would prevail with his lordship to pass it by ; but he immediately sent his order for the gentleman, his lady, and the commissioners, to attend in court, and upon hearing all parties vacated the fine. If the lady had died before her full age the estate had gone away ; but she lived to levy another fine ; and so no harm was done but only the disgrace of having played a false trick to no purpose. And he did the like in another case which he caught a knowledge of by like accident. So rigorous was he to his purpose I touched before, viz. *Nil conscire sibi*.

154. And as for fines themselves, they are no other than an accord of a lawsuit entered among the acts of the court upon record ; and now, as well by the tenor of them as by usage and certain statutes interposing, they are become a common and the firmest assurance of lands. The usual import of them, for assurance of freehold, is a cognizance of right founded upon some legal conveyance pre-supposed ; which implieth an antecedent feoffment ; and therefore a fine is called a feoffment upon record. This course is the most ancient of any in our law and is coeval with the county court, which was the ordinary court of justice in the times before the Conquest. It was then a common practice to recognize deeds, concords, and last wills there ; which being entered in the acts of the court or wrote in the margin of God's book, (the Mass-book, or of the Bible itself,) was irrefragable ; as who will may see in the learned epistolary dissertation of the Reverend Dr. Hickes in his great Thesaurus. But after the Norman conquest, when the king's courts were established, and titles of lands, which were feudal, only triable there (for freehold, at this day, ousts the county court of jurisdiction), after the older usage of recognizing in the county court (then deprived as to land) they came to recognize in the king's court of Common Pleas ; but it must be with royal leave and paying to the king a fine for the liberty of agreeing : because, if the suit had gone on, the party in the wrong was to be amerced. Then, after the licence actually obtained and the king's silver paid, without which the concord is no fine, the fine is perfected though in some

other respects deficient. Hence, as I take it, the concord is called a fine levied and not because it is *finis litium*. I have here but touched so much as I am apprised of the ancient history of the law as to fines, in conformity to what his lordship used to recommend to his friends who were studiously inclined; encouraging the speculation of originals or the history of the common law; as will be showed in proper place.

155. While his lordship sat as chief in the Common Pleas, he and the other judges were exceedingly troubled with a very impertinent projector, one Brunskill, who pretended to make great improvements to the crown by the revenue of the green wax; which is that which comes, or ought to come, into the Exchequer by estreats from the several courts of justice, and consists of the mulcts of jurors for default of appearance and other mulcts, which are sent from thence down in schedules under a seal of green wax by way of warrant, to the sheriffs and bailiffs of liberties, to be levied. His lordship (and the judges) being tormented with references from the court and the Treasury, about a patent which this Brunskill was suing out concerning this revenue, applied his thoughts chiefly to it, that he might be able to answer those great men who, (as in all rascally projects which come with pretence of great gains, and are little understood,) from behind the curtain solicited the project and were to be sharers in it. And, having searched all corners to find what had passed formerly in that matter, and designing thoroughly to expose the vanity or rather (with respect to the quiet of the people) the pestilence of it, he left in writing what he was pleased to entitle, "An History of the Green Wax;" and it is sufficient to inform any one that is desirous to understand the walks this project hath had, and the true intrigue of it. But in regard I find a paper of his lordship's upon the same subject, which I presume was wrote more early, in order to answer some great man's importunity, I shall subjoin that here; which, for the present, may give an account satisfactory enough.

156. "The green wax was in the survey of one Mr. Aram, when Sir Robert Howard held the farm of it, who appointed the best men he could get for the service. It was repre-

sented to the king that the judges and juries were discouraged and that the revenue went to private hands ; and thereupon the king bought in the farm for six thousand pounds. Then Mr. Brunskill's project was set on foot to improve this revenue to twenty thousand pounds, sixty thousand pounds and, afterwards, to four hundred thousand pounds per annum. Upon the first Mr. Aram's patent was determined, and the king expressed some dislike to Mr. Aram. Afterwards Mr. Brunskill kept a fluttering to set up an office in the Temple and great lords to be commissioners, which alarmed all the world. And Mr. Brunskill would never take the ordinary care that belonged to the business, but pressed the judges to make such rules and orders as they could not do by law ; and he complained of them to the king and entered into controversy with them ; so that for several years, upon the pretence to improve, the care of this revenue was wholly neglected. I, thereupon, mentioned to my Lord Rochester a necessity of having a surveyor, that is a reasonable man, and recommended Mr. Coltclough and promised my assistance and instructions ; and he was employed by the commissioners of the treasury and I gave him instructions how he should proceed. But my Lady Yarmouth, Mr. Brunskill's patroness, hearing of it went to the king and claimed it as right that Mr. Brunskill should have it and no man else employed : and so stopped Mr. Coltclough's patent ; and it hath been neglected ever since. The king is now pleased to declare he will have this revenue taken care of, and recommended it to the lords of the treasury to find a fit person. Mr. Brunskill's patent, if he hath any, must first be determined."

157. It seems this green wax project began with a pretence of pure collection, but soon became an interest ; and at first the discourse ran only upon the casual profits ; but afterwards, all penalties of statutes were to be put into the patent. And that explains the inefficacy and then the restlessness of Brunskill. For first, he would not collect the revenue, that it might seem little and be the readier granted. And nothing would serve him but a grant of all the revenue arising by the king's courts. And when businesses of this nature want shoulders at court to heave them forwards, then great men and topping ladies (hopeful

solicitrices) are taken in for shares and so let into the secret. And if it had not been for such knotty inflexible pieces as these judges, and particularly his lordship who had the labouring oar, and took care rightly to inform his majesty and his ministers of the foul practices (intentionally) couched under fair pretences, the project, to the infinite vexation of the people and little or no profit to the crown, had probably taken effect.

158. I have not here observed any order of time in the mention of these passages, nor do I intend it more in those that follow; it being, as I take it, not material so long as I keep myself within the proper stage of his lordship's life, that is his being a judge of the common law. I must needs say that that was his peculiar faculty; within the sphere of which he was scarce ever at a loss or failed to extricate, even on a sudden, the most perplexed causes and questions of law. I may not here give a character of his justice without repetition, and that of the panegyric kind; of which too much, though never so true, is fulsome. But I may knowingly affirm that his integrity was untainted; and he never warped to grieve any adversary for party or in particular, nor was shy in doing right to his friends for fear of obloquy, for he knew what he did and always gave reasons in public that would sustain it. But he showed his universal good will by nothing more than a restlessness under abuses that tended to grieve mankind. No one can think any man, not ambitious of doing good, could be so taken up with spying out what was amiss and suggesting remedies as he was. Of all which I shall in the following sheets give a particular account.

159. All the while his lordship was chief justice of the Common Pleas, and had leisure, he bent his thoughts very much to regulating what was amiss in the law. For it is impossible but in process of time as well from the nature of things changing as corruption of agents, abuses will grow up; for which reason the law must be kept as a garden with frequent digging, weeding, turning, &c. That which in one age was convenient and, perhaps, necessary, in another becomes an intolerable nuisance. His manner was, as any abuse or regulation came in his mind (of which very many from the multitude of business that passed him

must happen), he set it down upon some by-paper or book used for noting. And then, upon a second view and reconsideration, he digested his thought and brought what he had so digested into the form of a tract, and thereon designed to prepare acts of parliament as he had encouragement and opportunity. He had a great hand in the statute of frauds and perjuries of which the Lord Nottingham said that every line was worth a subsidy. But, at that time, the Lord Chief Justice Hales had the pre-eminence and was chief in the fixing that law: although the urging part lay upon him and I have reason to think it had the first spring from his lordship's motion.¹ For I find in some notes of his and hints of amendments in the law, every one of those points which were there taken care of; and divers other matters which he set his mark upon have since been regulated by acts of parliament express.

160. He was extremely desirous that a register of titles to land should be settled, and he worked seriously upon it. There were frequent attempts in parliament to establish one; but none ever was presented to them tolerably digested; and so they came to nothing.² And besides, the matter being a subject of great skill as well as foresight in the law, the gentlemen of the country are afraid and hearken to the learned as when they settle their estates; and such learned gentlemen, admitting they were willing to it (as they are reputed for the sake of interest in practice not to be) they would be scrupulous enough; but, being averse, they raise a mist of scruple upon every such bill and represent the possibility of frauds in the offices to be so dangerous to men's titles, that the country gentlemen, who do not take upon them to judge and will trust nobody, fly back; and there falls the bill. And so it will ever be, until they trust some persons with the conduct of it who are capable and willing to promote it. For as to the tre-

¹ Sir Leoline Jenkins is also said to have had a share in the framing of this celebrated statute. Lord Mansfield doubted whether the bill was drawn by Sir Matthew Hale, since it was not passed until after his death, and was introduced in the usual manner, and not upon any reference to the judges. (1 *Burr. Rep.* 418.)

² This subject appears to have attracted much attention at the period mentioned in the text. See the *Harleian Miscellany*, vol. vi. p. 323, vol. vii. p. 483, vol. viii. p. 20.

menndous frauds that are so much exaggerated by some, I must needs allege that records of every court of justice are obnoxious to ten times more ; and if those courts were now to be settled, no man could agree to such looseness of keeping records that concern men's estates as there is to be observed : and yet they do the work they were instituted for ; and so would registers if they were once established. As, for instance, the register of the Fens hath not had one fraud exercised upon that office since, by the act for dividing the great level, it was erected.

161. My Lord Chief Justice Hales had turned that matter in his thoughts, and composed a treatise not so much against the thing (for he wishes it could be) as against the manner of establishing of it ; of which he is not satisfied but fears more holes may be made than mended by it. My Lord Chief Justice North, on the other side, thought that it was not only practicable but absolutely necessary and, if it were not done, that forgery would soon be the best trade in England. That used to be his expression.

162. And because some used to say that forgeries were not frequent or that they were commonly unsuccessful, because on careful examination at trials they were for the most part detected ; he bethought himself of all the successful forgeries that came to his own knowledge, or that he really thought to be so in the course of his business ; and of them he made a list. The modern way of conveyancing is so private that no wise man, be he never so careful, can be aware of it ; and his lordship thought the law ought to be so settled that a wise and careful man might be sure of his title whatever became of the supine and negligent, and that the old rule is true, viz. *quod vigi-
lantibus et non dormientibus obveniunt leges*. That is, that laws are made for the benefit of those that are watchful and diligent and not of the careless and negligent.

163. After his lordship's death, I found among his papers several draughts of acts of parliament which he had prepared to put forward as opportunity offered. By those I perceive his intent was not to crowd into one bill many matters ; but to pass them in separate bills for readier dispatch in the two houses. Else any one matter of long

debate, retarded all the rest upon which no question was made. If the gentlemen of England in parliament would find in their hearts to trust fit persons, as the chiefs of the law for instance, (who by their public stations are answerable to all mankind for their behaviour,) taking whom they would to their assistance and act, debate, and hear in public; to draw up a law out of particulars, as the ancient way was, and then unless gross mistakes are showed to pass it upon their authority, there would be some hopes of an effectual regulation in a multitude of particulars that all agree need it.¹ And it is believed that the *vetera statuta*, or ancient laws, were so made by the judges and great men in vacation of parliament, either pursuant to petitions before, or afterwards authenticated there; otherwise they could not have been framed so orderly, concise, and proper as they are. I must not enlarge upon these subjects here, lest I anticipate the proper place of them or, what is worse, repeat when I come there.

164. But as to his lordship's method of trying causes, in which his justice was most conspicuous, it may be well conceived that he, who, as a pleading counsel had run through the whole course and had all possible experience of that practice, and being withal capable and upright as he was, coming to superintend others must needs be a master-workman. Who so fit to command in the place of general as he who had trailed the pike, and was afterwards through all the services of war advanced to the post of chief? In the first place, he would not endure that, in private conversation with or about him, any one should speak of causes depending in his court. It was said of a great master of painting, Lely, that he would not willingly see a bad picture; for he never looked upon one but it tainted his pencil: so there can be no discourse of a controversy which doth not leave a tinct of prejudice. A man cannot read of such matters, nay, overlook gamesters without entering into party. Justice, therefore, should be deaf except in the seat and blind there. Sometimes very great men would be so overseen as to speak to him of causes,

¹ Sir M. Hale, in his "Considerations touching the Amendment of Laws," has recommended a course very similar to the one here pointed out. (*See Hargrave's Law Tracts*, p. 273.)

whom he could not slight ; and to such his carriage was passive, showing respect, but saying nothing or what signified as little ; and he ever suspected a cause that used such means, and hath often reflected on them in court. The gentleman (the Hon. Roger North) whom his lordship favoured to be almost continually in his conversation, and even to ride with him in his coach to and from his courts when he sat upon trials, had the honour of his lordship's express declaration that, "in all the course of his practice under him he never spoke privately of any cause depending:" which, considering the constant society and familiarity few would imagine ; but I can affirm it to be critically true.

165 Next, in his lordship's conduct of trials he was very careful of three matters. 1. To adjust what was properly the question and to hold the counsel to that ; for he that has the worst end of the staff, is very apt to fling off from the point and go out of the right way of the cause. 2. To keep the counsel in order ; for in trials they have their parts and their times. His lordship used frequently to inculcate to counsel the decorum of evidencing practice. 3. To keep down repetition, to which the counsel one after another are very propense ; and, in speeching to the jury one and the same matter over and over again, the waste of time would be so great that, if the judge gave way to it, there would scarce be an end ; for most of the talk was not so much for the causes as for their own sakes, to get credit in the country for notable talkers. And his lordship often told them that their confused harangues disturbed the order of his thoughts ; and, after the trial was over, it was very hard for him to resume his method and direct the jury to comprise all the material parts of the evidence. Therefore he was positive not to permit more than one counsel of a side to speech it to the jury, by way of summing up the evidence ; and he permitted that in such a way as made them weary of it. For, in divers sorts of trials, he wholly retrenched it ; and where he observed much stiffness and zeal of the parties in a cause, then, after the evidence was over, he would say, "Come, make your speeches ;" and then sat him down : and that looked with a sort of contempt of their talents, which gave them

a distrust and discomposed their extempore so much that, for the most part, they said, "No, we will leave it to your lordship." And thus the abuse, by fastidious talk, wore away; and the practice before him was so well known, as it became at length a pure management of evidence and argument of law.

166. He made a great difference in the nature of causes; for if there was a suspicion of fraud, false dealing, or forgery, he was a most strict examiner and would canvass the evidence to a scruple, giving all latitude to the counsel to refine and suggest where he might, if possible, lay hold of a thread, in order to gain a clear solution of the fact: For it was not enough that he, in his private opinion, thought a deed forged or the like; but he must have evidence by the force of which he might show it so plain as would satisfy the auditory as well as the jury. And, after all, if he could not arrive at that, he let it go and directed the jury upon the case as it stood upon the evidence, whatever it was. I wondered once to find him, after an hour's sticking and picking upon an evidence, at last all at once give it up. I asked him, "Why he left off so abruptly?" He told me that he discerned a roguery; but the evidence was not sufficient to justify him to direct the jury to find it; and thereupon, he directed as the strength of the evidence required to find, even contrary to his own private judgment. For, in points of fact whereof he was neither judge nor witness, he must have warrantable reasons for what he said, or insinuated to the jury, who only were the proper judges; and the rather because they seldom found against his decisive directions; and his suspicions were not to guide their verdict upon oath. But in other sorts of causes, as about boundaries, ditches, ways, trees, and the like, which depend upon mere testimony, and not sagacity and penetration for extracting facts out of circumstances, he took less pains, and, after the question was stated, he used to say, "Call your witnesses;" and sat down till something called him to observe. He allowed no cross-examining, till one side had done with the witness; nor would he allow the defendant to say anything, but only to cross-examine till the plaintiff had made an end; and then he heard the defence at large, and did not

allow the plaintiff to interpose, but in the same manner ; and always took care that the counsel examined all their witnesses, till they said they had no more : knowing that a countryman never thinks his cause tried, unless all his witnesses are heard.

167. He was very good at way-laying and disappointing the craft of counsel ; for he, as they say, had been in the oven himself and knew where to look for the pasty. Serjeant Maynard was a very able practiser, and used to lay traps for the judges, and very cunning ones ; but if he discerned that he was observed, he straight gave it up, and contended not upon a fallacy which he foresaw would be resolved. Sir William Jones sometimes came before his lordship at the *nisi prius*, and used art enough and was very angry when it did not succeed. As, for instance, by such forms as these : “ If, my lord, we prove so and so, — then, so and so — ” and, after that, wait for the judge’s answer, If the judge said, “ Ay, if you prove that indeed, then, &c.,” the lawyer concluded the jury was prepared so far ; and if, in the course of his evidence, he could charm them to think he had proved that matter, although not sufficiently, he carried the cause : at least, in the proceeding, he so entangled the judge that he could scarce get clear. His lordship, in such cases, always declined answering any thing, but said only, “ Call the witnesses, and prove what you can.” Then the counsel at it again : “ But if we prove — ” “ When you have proved,” said the judge, “ I will tell you what I think, and not before.” For his lordship knew that way of evidencing to be a sure sign that the proof did not come up to the point ; and so must be supplied by opening and concessions beforehand. This was one of the chief arts practised by Sir William Jones, upon trials at law ; which the judge’s meeting with, in the manner I have mentioned, usually put him out of temper.

168. It would be endless to show all the remarkable trials that came before his lordship : I shall therefore only, as a diversion, subjoin one or two of them. Once a cook brought an action against one Mr. Grant, of the Inner Temple, for diet delivered in his chamber. This Grant had a brother and a mother ; and they dieted together in

this chamber. At the trial, the defence was that the other brother, by agreement, was the housekeeper and was to pay for the provisions; the rest did but diet with him; and the mother was the witness to prove it: so the cook had mistaken his customer. But his lordship was of opinion, that the owner of the chambers was the housekeeper as to all foreigners, who look upon and trust the visible owner whatever the agreements among themselves may be. Then they said they would prove the cook paid off to 1677, and gave him his acquittance. The cook started forth from the crowd; and, "My lord," said he, very quick and earnest, "I was paid but to 1676." At that moment his lordship concluded the cook said true; for liars do not use to burst out in that unpremeditated manner. This was one of his lordship's marks whereby he judged of men's sincerity; and it seldom failed him. Having therefore this opinion of the fact, he eyed the acquittance thoroughly, and saw 77 as plain as could be. He asked the cook again and again, if he was sure; to see if he would stammer or hesitate, as liars will often do; but his answer was blunt and positive, as before. Then his lordship, in the *nisi prius* court in London, sitting under a window, turned round, and looked through the paper against the light; and so discovered plainly the last figure in the date of the year was 6, in rasure; but was wrote 7 with ink. He made the jury look through it as he did; and the cause was in that point also determined for, which else had gone against, the poor cook. The moral of all this may be, that "falsity is never safe."

169. Mr. Serjeant Maynard had a mind to punish a man who had voted against his interest in a borough in the West, and brought an action against him for scandalous words spoke at a time when a member to serve in the House of Commons for that borough, was to be chosen. And, after his great skill, he first laid his action in the county of Middlesex: and that was by virtue of his privilege, which supposes a serjeant is attendant on the court of Common Pleas and not to be drawn from the county where the court sat. And then in the next place, he charged the words in Latin, that, if he proved the effect, it would be sufficient; whereas, being in English, they must prove

the very words to a tittle; and those were a long story that used to be told of Mr. Noy, and all the cock lawyers of the West. And this was tried before his lordship at the *nisi prius*, for the Common Pleas for Middlesex. The witness, telling the story as he swore the defendant told it, said that a client came to the serjeant and gave him a basket of pippins, and every pippin had a piece of gold in it. "Those were golden pippins," quoth the judge. The serjeant began to puff, not bearing the jest: so the witness went on. "And then," said he, "the other side came and gave him a roasting pig (as it is called in the West) and in the belly of that there were fifty broad pieces." "That's good sauce to a pig," quoth the judge again. This put the serjeant out of all patience; and speaking to those about him, "This," said he, "is on purpose to make me ridiculous." This story, being sworn, the judge directed the jury to find for the serjeant; but in the court, the judgment was arrested, because the words were but a land story and went as mere merriment over ale, without intent to slander. Such bitterness flows from the sour spirits of old pretended republicans. It had been well if no other instances but such as this were extant to show it. This happened when I attended; and so know the matter to be as above literally true. But it is hard to believe that such a poor revenge could have been put into act by so great a man. And I should almost distrust myself if I had not been partaker of a more wretched come-off with the same person; which I shall relate, conceiving it to be full as material to show little things of great men as great things of little men. One afternoon, at the *nisi prius* court of the Common Pleas in Westminster-hall, before the judge sat, a poor half-starved old woman who sold sweetmeats to schoolboys and footmen at the end of the bar, desired the serjeant to pay her two shillings for keeping his hat two terms. She spoke two or three times and he took no notice of her: and then I told the serjeant, "the poor woman wanted her money, and I thought he would do well to pay her." The serjeant fumbled a little, and then said to me, "Lend me a shilling." "Ay, with all my heart," quoth I, "to pay the poor woman." He took it and gave it her; but she asked for another. I said, "I would lend him that also,

to pay the woman." "No, don't, boy," (said he,) "for I never intend to pay you this." And he was as good as his word; for however he came off with that woman, having been as they say a wonderful charitable man, I am sure he died in my debt.¹ But in this manner (as I guess he intended) I stood corrected for meddling.

170. This great man, as I must call him, since his natural and acquired abilities and the immense gains he had by practice justly entitle his name to that epithet, was an ante-Restoration lawyer. In 1684, I heard him say in the court of Chancery, of a cause then at hearing, that he was a counsel in that cause in the year 1643. His name is in Crook's Reports, in 3 Car. His actions in the rebellious times made the Act of Indemnity smell sweet. And afterwards, he had the cunning to temporize and get to be made the king's eldest serjeant, but advanced no farther. His lordship must needs have much conversation as well as intercourse in business with this eminent practiser in the law; but, as in other cases of adverse party-men so here, there could be no cordial friendship between them; but a fair and reasonable correspondence there always was. The serjeant ever took in with proceedings that maligned his lordship; but he never outwent discretion so far as some did, to appear directly and nominally against him, which must have certainly rescinded all kind of correspondence. When his lordship sat in the chair of the Common Pleas, he practised under him and had always the respect due to his known abilities. But though the serjeant never failed to conform to all things required of him in public, as oaths and tests, &c., yet for all that, he continued a favourite in the Presbyterian congregations; and is at this day among them extolled as a saint, and his wonderful charities and other good works related: and to give him his due, he was to his last breath at the bottom true as steel to the principles of the late times, when he first entered upon the stage of business. And, whatever we that were frequently at his elbow knew of his saint-like administration of himself and his wealth, it is fit to be silent, because we should not speak ill of the dead. And in that tendency, I shall

¹ Sir John Maynard died 9 Oct., 1690.

only observe farther of him that he practised before his lordship in all the king's courts where he had sat as judge; and, being an artful as well as learned lawyer, would lay notable snares; but when discovered never persisted, but sat down; and, for the decorum of bar practice of the law, was an excellent pattern and held a fair correspondence and used a decent respect towards his lordship all his time.

171. Now it is high time to bring his lordship forward into that part of his office that requires him to be a judge in the country circuits; which is all the shadow we have of the ancient iters which now are restrained to the crown law wholly, except the commission of assizes and *nisi prius* which come in by statute provision. But anciently the judges itinerants were for all pleas, which, after the Conqueror had taken cognizance of the debts of the laity to his own court, was a great ease to the country who, for their greater matters, must have followed the king's court wheresoever he might happen to be. His lordship had no charge of determining capital offences but here; and that was one thing which made him esteem his office in the Common Pleas so much: whereas the chief justice of the King's Bench hath almost continually that kind of work upon his hands. He made the Western circuit his choice; not for the common cause, it being a long circuit and beneficial for the officers and servants, but because he knew the gentlemen to be loyal and conformable and that he should have fair quarter amongst them. And in that he was not mistaken; for, after a few circuits passed over, they found his measures and their desires consonant in all things; whereby, he became not only well accepted but did also contract a sort of alliance and strict friendship with much the greater and most considerable part of them. And that interest stood him in good stead in time of need: for so considerable a body and so united as the Western gentlemen in parliament were, did so firmly ensconce him, that his enemies could never yet get a clever stroke at him. Dr. Mew, late Bishop of Winchester, whom (from a black plaister he always wore on his cheek, to cover a place where, in the late wars, he had been wounded) they called Patch, in his stiff way used to say that the Lord Chief Justice North was *deliciæ occidentis*, or the darling of the West.

But once his lordship and all of us of his train had like to come off but poorly at Exeter assizes. It was well for us that we were known there, or to pot we had gone. It will be guessed that something comical is coming; and really so it is, and fell out thus. There was one Mr. Duke, a busy fanatic whom old Sir Edward Seymour, father of the late Speaker, used to call Spirit Po; that is, a *petit diable*, that was presto at every conjuror's nod. He was a common runner up and down on factious errands; and there could not be a meeting in the country, for business or mirth, but Spirit Po was there. This gentleman with irresistible importunity engaged the judges to take a supper and lie at his house, in the way to Exeter. It was impossible we could reach so far that night; and his lordship was not averse to seeing variety of gentlemen's seats in the country; and that was (justly) reputed a neat one: so, little suspecting what happened, we complied. All things but one were well; and that was very unexpected and rude. The gentleman had not the manners to engage the parish minister to come and officiate with any part of the evening service before supper; but he himself got behind the table in his hall and read a chapter, and then a long-winded prayer after the Presbyterian way. The judges took it very ill, but did not think fit to affront him in his own house. Next day, when we came early in the morning to Exeter, all the news was that the judges had been at a conventicle, and the grand jury intended to present them and all their retinue for it; and much merriment was made upon that subject.

171a. Besides seeing the most considerable seats of the nobility and gentry, in the countries where he went which, to say truth, he could not well avoid, being so much invited and nobly entertained as he was, not more out of the ordinary respect paid to judges but as one of his majesty's best friends, and whom they regarded not more on account of his quality than for his personal character and qualifications which had entitled him to their esteem and friendship, his lordship took the opportunity to join thereunto an inspection of such curiosities as were famed in the several countries he passed through; as, in particular, the Cob at Lyme, a small port in Dorsetshire, that is situate

in the Cod (as they term it) of a bay, where there was no river or land-lock provided by nature to prevent the certain loss of ships at anchor there ; and, of all places upon the coast of England, least to be suspected for a good port ; but art and industry will do wonders ; for all the requisites of a safe harbour are supplied by this Cob. The small vessels which serve the trade of the town consisting chiefly in woollen manufacture of that country, carry on the trade outwards ; which is very beneficial. And, in that respect, King Charles II. allowed, out of the customs of that port, £100 per annum towards the charge of maintaining the Cob. But whether the same be continued or begged off I know not. His lordship had the compliment of a ship-master, who cleared his vessel and came to an anchor without the Cob, and invited him to come on board and take a turn at sea ; which he accepted and we went on board and, weighing anchor, stood west about an hour and a half, and then returned and landed at the Cob ; and surely a most delicious turn it was, for the weather favoured us. The Cob is a mole built in the sea, about two furlongs from the town, and named from the cobble stone of which it is compiled. There is not any one like it in the world : for though it is an immense mass of stone, of the shape of a demilune, with a bar in the middle of the concave, no one stone that lies there was ever touched with a tool or is bedded in any sort of cement ; but all, being pebbles of the sea, are piled up and hold by their bearings only, and the surge plays in and out through the interstices of the stone in a wonderful manner. That this must often decay is certain ; for the best-cemented square stone will scarce hold against the surge. But there is warning enough to alarm the town to repair and thereby to prevent any great ruin of it ; for sometimes a swamp will appear in the flat top where they walk ; and, when that is perceived, they go to work and take down all that part, and build it up from the bottom ; and nothing less will prevent the downfall of much more, sooner or later, as the seas rage more or less against it. And it may happen that some new foundation stones are to be laid. Those are of the largest sort that can be got ; and they search them out upon the coast, and mounting them upon casks chained together, with but one man

mounted upon them, he with the help of a pole conduets it to the place where it is to lie and then, striking out an iron pin, away go the casks and the stone falls in its place. The vessels of burthen are laden and unladen by horses, turning and returning upon the sand between the Cob and the town: and they have no drivers, but are charged with bales (for instance) at the warehouse, and away they trot to the ship side and stand fair, sometimes above the belly in water, for the tackle to discharge them; and then they gallop back to the warehouse for more; and so they perform the tide's work and know, by the flood, when their labour is at an end. I must own, I could scarce have believed this description if I had not seen the place and the poor horses at work: and I cannot but wonder that our topographers have taken no more notice than they have done of it. And it is not the only obvious curiosity in England that the best of them have left out.

172. His lordship visited the town of Pool, the place that gave the spring to *quo warranto's*, as is related in the *Examen*.¹ In that harbour the ebb and flood work alternately every six hours; and his lordship was informed that the like was observed in the ports of Southampton and Chichester: but nothing so regular and strong as here; and, being inquisitive into the reason of it, he was told that the ebb at low water, between Hampshire and the Isle of Wight, ran so strong that it shot into the harbour of Pool, lying in the line of its course; so that when it was low water at Hurst, it was high water at Pool. It appears by all the harbours of this coast, that the convenience is owing to a large inlet of water within the land, every tide; which, venting at low water, scours the channel. It is wonderful that, at Yarmouth, they do not provide to pen in a back water, rather than build promontories which shall fill up faster than they can build, and so, literally, make ropes of sand.

173. His lordship, agreeably to his great mastership of music, took great notice of the organ in the cathedral church at Exeter, where the two side columns that carry the tower, are lined with organ pipes, and are as columns themselves.

¹ See *Examen*, p. 624.

His lordship desired the dimensions of the great double diapason; and the account, as returned, is thus:—

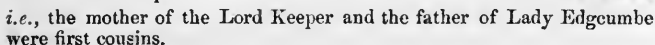
	Feet.	Inches.
Speaking part, long	20	6
Nose	4	0
Circumference	3	11
Diameter	1	3
	Hogs.	Gall.
Content of the speaking part . . .	3	8
		lb.
Weight		360

174. This is heard plainer at a distance than when near, as also louder: and behind that and the other large doubles, are placed large wooden pipes to help them into their sound, which otherwise would come on very slow, or perhaps not at all. One, being near enough, may by the touch of hand discern when it speaks and when not. How it is tuned, whether by measure or the beats, we were not informed; and, bating their account of it, which was curious and diverting enough, I could not be so happy to perceive that, in the music, they signified any thing at all, but thought them made more for ostentation than use: for there are terms in sound which will not be exceeded; for, when the vibratory pulses are so slow as may be distinguished, sound vanisheth; which is, nearly, the case of this great pipe. His lordship was always well pleased when his stages lay so that the Sunday was spent in a cathedral town. For he was always affected with the church service, and had the books of the hymns and anthems always brought to him.

175. His lordship went down to Plymouth and saw the town, which, as other marine towns, is crowded together and the streets are narrow. But the fort, which was built by King Charles II. with the marble of the place, and lime of the same sort of stone burnt, is a worthy spectacle, especially for its glorious prospect, overlooking the harbour which consists of two waters, one called Hamose, and the other Catwater. And, as the voyage is out or home, the ships are moored in one or other; because then, whatever

176. There was no opportunity of penetrating into Cornwall yet, because the judges, for compendium of travel, took the first town upon the borders capable of receiving them ; which is Launceston, where is an old ruined castle, and nothing else worth naming. The Cornish men are very fierce and contentious, and strangely given to indict one another. The traverses of these indictments, tried at the assizes, make good fodder for the lawyers ; for they are

Sir EDWARD MONTAGU=ELIZABETH,
of Boughton (d. Jan. 160 $\frac{1}{2}$) | dr. of Sir John Harington



always many, and beyond what are had in most of the circuit beside, and well-metalled causes. But this, as they say, prevents bloodshed ; which would follow if revenge had not that vent. The trade here, lying mostly with Londoners and foreigners, the people have a better English dialect than those of Devonshire, whose common speech, I think, is more barbarous than in any other part of England, the North not excepted. We were told that Saltash, three miles up the river from Plymouth, was anciently the port town ; for, in old time, so high within land was safer than nearer the sea : and well it might be so to small vessels. But ever since ships have been built larger, partly for better roads and partly for better pilotage, the port towns have crept nearer the main ; as they say would happen upon the Tyne ; and Shields would become the port town, if Newcastle had not a privilege that no common baker or brewer shall set up between them and the sea.

177. The return from the circuit was usually by Taunton-Dean in winter, and by Wells and Bristol in summer. Both of them are great towns, and to strangers, very remarkable. The latter is the cathedral of the bishop of Bath and Wells ; the other a very populous but withal a rugged unhewn town, and the roads of the country mere causeways of sharp flints. Near this place were two great families, one called Orchard Portman, the other Orchard Windham, at both which places his lordship had princely entertainment. The places noted to be seen there are Oaky Hole, Chedder cliffs, and Mendip hills. But I shall not stay to describe them but make for Bristol, which is a marine trading city with a small cathedral. It is remarkable there, that all men that are dealers, even in shop trades, launch into adventures by sea, chiefly to the West India plantations and Spain. A poor shopkeeper that sells candles will have a bale of stockings, or a piece of stuff, for Nevis, or Virginia, &c. and, rather than fail, they trade in men ; as when they sent small rogues taught to pray, and who accordingly received actual transportation even before any indictment found against them ; for which my Lord Jeffries scoured them, as is related elsewhere. In a word, pride and ostentation are publicly professed. Christenings and burials pompous beyond imagination. A man

who dies worth three hundred pounds, will order two hundred of it to be laid out in his funeral procession.

178. His lordship was there in summer 1680, which was next before that session of parliament that pursued the abhorrers; and, as the times then showed some dawnings of loyalty to the crown, it appeared more in Bristol than one would have expected. One Floyd was there, a true Welshman, as I believe; for I never saw or heard any human thing speak so lofty as he did, and all in humour and tags of Latin. He declared for *sub* and *supra*, and much more at that rate. There was one Row in office of swordbearer; which in that town is pronounced *sorberer*. I thought it sounded like Cerberus and not amiss; for the fellow was deep in the Rye plot for which he fled. He was strangely saucy and impertinent in his office. And once the judge looked back for one of his servants, and he comes forward, and "I'll wait on your lordship," said he. "You wait on my lord, sirrah?" said the mayor, "You shall wait upon me, and I'll wait upon my lord."

179. His lordship escaped a scouring here in the year in which Oates's plot raged. [A.D. 1680.] For Captain Bedloe came down to the assizes with a design to enter into his lordship's conversation and, what with discoveries and pretended discoveries, to have put the sham plot upon him; as probably he had done if Providence, and his usual forecast and caution, had not kept him at a distance. I am not concerned to display the particulars here, because they are fully related in the *Examen*; ¹ but however think it proper to insert his lordship's narrative for the sake of his justification in this affair, in his own words, as he sent it to Secretary Jenkins, with his letter.

"Account of the examination of Captain Bedloe of Bristol, 16th August, 1680, given to the House of Commons."

180. "At my first coming to Mr. Rumsey's, where I was to lodge at Bristol, upon Monday the 16th day of August in the afternoon, being the first day of the assizes,

² Page 252, *et seq.*

² Inserted in *Howell's State Trials*, vol vii. p. 1493.

Sir John Knight¹ came to me and said that Mr. Bedloe lay dangerously ill of a fever and had little hopes of life, and desired that I would give him a visit that he might impart something of great consequence before his death—I told him I would give him a visit that night after supper about nine o'clock, if I might be satisfied of two things: first, that there was no infection in his distemper: secondly, that the time would not be inconvenient, but he might discourse to me without prejudice to his condition. After a little while his physicians came to me and assured me there was no danger of infection, and the time I had appointed would be most proper, for commonly he took his repose in the afternoon and at nine o'clock he would in probability be refreshed, and fit to discourse with me.—Thereupon I declared my resolution of going; and desired the company of the two sheriffs and my brother Roger North, and appointed my marshal William Janes to go with me. As we were upon the way, Mr. Crossman, a minister in that city, told me Mr. Bedloe had desired him to come with me to him. I said it was very well, and I should be glad of his company. Whereupon we went all together, and being come into the room where Mr. Bedloe lay, I saluted him and said I was extreme sorry to find him so ill. I did imagine he had something to impart to me as a privy counsellor, and therefore, if he thought fit, the company should withdraw. He told me that needed not yet, for he had much to say which was proper for the company to hear: and having saluted the sheriffs and Mr. Crossman, he began to this purpose:—

181. “That he looked upon himself as a dying man, and found within himself that he could not last long, but must shortly appear before the Lord of hosts to give an account of his actions; and because many persons had made it their business to baffle and deride the plot, he did, for the satisfaction of the world, then declare upon the faith of a dying man, and as he hoped for salvation, that whatsoever he had testified concerning the plot was true, and that he had wronged no man by his testimony, but had

¹ He was M.P. for Bristol in 1679, and previously. There were two of the name at Bristol at this time; this was the elder.—*Examen*, p. 253.

testified rather under than over what was truth ; that he had nothing lay upon his conscience upon that account, that he should appear cheerfully before the Lord of hosts, which he did verily believe he must do in a short time.—He said he had many witnesses to produce who would make the plot as clear as the sun, and he had other things to discover which were of great importance to the king and country ; hereupon, he making some pause, I told him the plot was so evidently made out that no reasonable man, no protestant, I was sure, could doubt of the truth of it ; but he ought not to conceal any thing that concerned the king so highly : he ought to disclose his whole knowledge in matters of treason, that traitors may be apprehended and secured, who otherwise may have opportunity to execute their treasonable designs.—To this he replied that much of that which he had not discovered was to corroborate his former testimony ; that he had concealed nothing that was absolutely necessary to the king's preservation ; that he thought not fit to accuse more persons till he had ended with those he had already accused. He expressed great grief and trouble at the condition of his poor king and country (so he termed them), whom he knew at that time in imminent danger from the jesuits, who had resolved the king's death, and he was sure they would spare him no longer than he continued to be kind to them. He said he was privy to their consultations at Salamanca and Valladolid, where they used to observe the favourable conjuncture they had to introduce their religion into England ; which consisted in their having a head, who must be set up, whatsoever came of it, and if they let slip that opportunity they should never have such another ; for without a head they could do nothing. He said farther, he knew the wickedness and resolution of jesuits, they stuck at nothing to compass their own ends. They had attempted to poison him but he had escaped.

182. "When he had finished this discourse (which lasted about a quarter of an hour) I asked him if the company should now withdraw, and he said, yes ; and ordered his nurses to go out, and only his wife to stay to tend him. And thereupon all went out, saving Mrs. Bedloe and myself, and my servant William Janes. Then I told him

I thought it convenient that what he should say unto me should be upon oath; he replied, it was necessary it should be so and called for a Bible; but my servant having brought a book with him, administered the oath to him and, laying his paper on a chair by the bed-side, wrote down his deposition as he delivered it.—When Mr. Bedloe had concluded and said that was all he had to inform me of, I took the paper and read it over to him distinctly, and he approved it and signed it laying the paper upon a pillow. I thought it not fit, considering his condition, to perplex him with questions, but took his information as he offered it and held no discourse with him when the company was withdrawn, but concerning the true setting down his depositions. And when he seemed to be weary, to mind him of taking cordials, which his wife reached to him as he desired them.

183. “The next day Mr. Bedloe’s brother came to me, and told me his brother desired a copy of the deposition he had made before me, but I told him I had well considered it and could not give him a copy without the king’s leave, but I would move the king in it and, if he gave leave, I would take care to send one to him; and Mr. Bedloe’s brother told me, that it was his brother’s desire that I should recommend to his majesty his condition; that his sickness was very chargeable, and move his majesty for some supply of money for his subsistence, which I promised to do.—This is all I can recollect of what passed upon this occasion, and is in substance true, but the very words and order I cannot remember.”

LETTER TO MR. SECRETARY JENKINS.

“SIR,

184. “I ALWAYS intended to write from hence, to pay my thanks for the whole circuit, which was much more pleasant by your favour of holding a correspondence with me; but now I have some business of importance: for as soon as I came to this city, I received a letter from Mr. Bedloe by Sir John Knight, that he being very ill, and in the judgment of physicians in great danger of death, had some business of great moment to impart to me. I, know-

ing the man and the season, would not refuse the pains to give him a visit; and being satisfied by physicians that there was no contagious quality in his distemper (though I did not much fear it), I went well accompanied; and, in the presence of the company, he declared that whatever he had said concerning the plot, was true, and he being a dying man had nothing lay upon his conscience on that score. The greatest trouble he had was the danger the king, whom he loved above all things, was in from the papists at this time, who would attempt his life as soon as ever he should cease to be kind to them. After I had asked him if he had any thing to impart to me in private; he told me he had, and having made the company withdraw, all but my clerk, I took the inclosed examination upon oath. You may imagine I was not curious to perplex him with questions, I took it just as he delivered it; of what signification it will be, I leave to wiser men. I think it my duty to send it to you, that you may inform his majesty of the truth. I shall wait upon you at Windsor upon Sunday next, to receive your farther commands.—Ten at night; the copy inclosed ill taken; I shall bring the original with me.”

“*The Examination of Captain William Bedloe, taken upon oath before the Lord Chief Justice North, at Bristol, 16 August, 1680.*

185. “The examinant saith, that the Duke of York hath been so far engaged in the plot, as he hath seen by letters in Cardinal Barbarini’s secretary’s study, that no part hath been proved against any man already that hath suffered, but that to the full those letters have made him guilty of it all but what tended to the king’s death.—At Rome I asked father Anderton and father Lodge, two jesuits, what would the duke do with his brother when he was king? And they answered me, they would find means for that, they would give him no trouble about it.—Then I told them I believed the duke loved his brother so well, he would suffer no violence to be done to him; they said no; if the duke could be brought to that, as he had been religiously to every thing else, they might do their work, their other business was ready, and they might do it pre-

sently, but they knew they could not bring him to that point; but they would take care of that themselves; they had not begun with him to leave him in such scruples as that, but they would set him into his throne, and there he should reign blindfold three or four days, for they had settled some they should pitch the action upon, who should clear their party, and then he should fly upon them with the sword of revenge. And this examinant doth further add, that the queen is not, to this examinant's knowledge, nor by any thing he could ever find out, any way concerned in the murder of the king; but barely by her letters consenting and promising to contribute what money she could to the introducing the catholic religion: nay, it was a great while, and it made her weep, before she could be brought to that."

10th Nov. 1680.

Imprimatur,
W. WILLIAMS."

186. As to the true intent and design of this expedition to Bristol, I shall say nothing here, because it is fully accounted for in the Examen. But as to his lordship's private concern in particular, it is to be known that nothing was more desired by the party, than to remove him (who was an inflexible loyalist) out of their way; and, in order to that, to fasten some trepan upon him, or get some advantage of charging him with matter of discouraging, ridiculing, tampering, or stifling the plot; all of which were sins in a high degree, and ground enough for an address to remove, &c.

187. Now in this expedition, Bedloe, by design, having his lordship (as he might think) to himself, by often repairing to him, frequenting his table (as his brother was so brazen-faced to do) and pretending to make known horrid facts against the queen, and the duke; at which, as was presumed, his lordship might start and wish him to have a care, and the like. And then, if a formal deposition was taken, he might say that in discourse he had discovered much more, but his lordship persuaded him to suppress it, or any thing else that, having had opportunities, he had been pleased to say or swear; and his brother and wife, and somebody else (perhaps) at hand to swear

matters called circumstantial evidence. And this is not such a romance of pure invention, as may seem ; for after this birk of a discovery was known, it was reported and by many really expected or believed that Bedloe's wife was coming to town, and would testify that her husband had discovered other matters, and more positive, but his lordship had suppressed them. But after she was come up, she had no discovery to make, but of her wants ; and, after having got what she could, she vanished. And thus his lordship reaped the fruit of his good fortune and caution ; for without the former, I question whether all his stock of the latter would so clearly have brought him off.

188. His lordship was not long come to town, before he was summoned to attend the House of Commons to give an account of what discoveries, touching the plot, had been made to him at Bristol. This gave him occasion to ruminate all the whole proceeding, to find if any slip had been made (for he all along trod upon eggs), and he could find nothing possible to be cavilled upon, but (perhaps) a slip in his letter to the secretary in these words—"You may imagine I was not curious to perplex him with questions." As if he was wilfully wanting in searching out the truth by questions ; but the answer was obvious, and no notice was taken of it. His lordship was not used to afford any umbrage of ill construction against himself, but this came out on account of familiarity with the secretary, not dreaming of a public scrutiny : and, in such a case, it might have proved a great deal worse : but now for the House of Commons, his lordship attended at the time and having a chair set for him by the table, after sitting a while, he stood up and related the passage shortly ; and as to the circumstances, there was his narrative of every particular. And then he gave in the original examination, (which, for this purpose, he had obtained from the secretary,) and he laid down the very letter he wrote to the secretary (obtained as before) in which had been inclosed the copy sent up from Bristol. And having said that this was all he knew or could recollect concerning that matter, he was dismissed. It is to be supposed that all this gear was sufficiently canvassed, but nothing to be

got out of it ; so, after a considerable time, it was ordered to be printed, as before was mentioned, and he never heard more of the matter. I do not mention here the snare laid for the judges by the Earl of Sunderland when secretary, because the same is particularly related in the *Examen*.¹ And I lay aside the voyaging part, at present, and return to his lordship's conduct of himself in the execution of his commissions of assize, &c., in the Western circuit.

189. His lordship took care always to declare the laws to the country with all the exactness possible, and without making any distinctions of favour, of any party or denomination of men ; and, according as the tenour of our law-books run, he exhorted to loyalty, and to support the royal prerogative by law ; showing that the safety of the national religion and property depended on the people's dutiful and legal obedience to the crown : and, for this purpose, he used some short harangue at the entrance of his charges. When he first came the circuit, for two or three years, the factious gentlemen came to him, and, for aught that appeared at first to the contrary, for respect, as others did ; but, in truth, it was to sound, and practise experiments upon him ; but more especially if any factious cause was to be tried, as against a justice of peace for disturbing conventicles, a mayor of a town for some slip of authority exerted against the party, or, perhaps, where some party-men were defendants, or the like, either to sound his lordship's temper, or tempt his judgment by flatteries, or, at a distance, shows of terror, and the like ; as his lordship soon found was manifestly their drift. He received them with all the civility that was decent, and discoursed with them amicably and freely upon indifferent matters ; and, while they glanced at what he did not like, he gave them the hearing, and served himself of their discourse, to conjecture what was upon the anvil, and what they drove at. But, in his own talk, gave no umbrage for them to think him ductile, or to be wrought upon against his principle, or that their discourse made any impression upon him ; and wonderful careful he was not to give handles against himself ; such as, among that party,

¹ *Examen*, p. 363.

might be wrested to calumny, as if he favoured popery, or arbitrary power: all which they earnestly desired should be believed of him. And so amongst the gentlemen of the loyal side, who, in most of the counties, were almost the whole body, he used no other terms in his private discourse, than might have been pronounced upon the bench: for there is found in most men, either an itch, or else a vanity of talking, which disposeth them to report what their superiors say; and is sometimes the cause of great misconstructions and inconveniences. For which reason, men, in authority, cannot be too solemn, and attached to a true sense and principle in their ordinary conversation.

190. And his lordship, when the factious causes came to be tried before him and by the muster, he observed the tendency of the matter and sometimes thought it was brought forward to try him rather than the parties, managed with absolute regard to the strictest forms of law, and justice of trials, gave full hearing, and allowed of no indecency or disorder of counsel, took no notice of what some, upon the bench, would insinuate (for the gentlemen were warm, and, on one side as well as the other, apt to meddle), but, before he had done, reduced the fact to a state of clearness; and so, after all impertinences pared off, the law was seldom doubtful; and, if it were, he gave such reasons, as justified his determinations: and so he sailed among the rocks, gave full satisfaction to active gentlemen that the law was his rule, and the forms of it his direction. And the faction had no handle for any complaint that wrong was done, either in the matter or manner of his trials. Only some of them said that "he never bit but in the right place;" and, to say the truth, of that he seldom failed. In this manner the faction proved him, till after two or three years experimenting they despaired of making any impression upon, or getting any advantage against him; and so they gave him over. For the chief of them, as, for instance, Sir Francis Rolls in Hampshire (but there is no need of names) and others, forbore the assizes, and came no more there while he came that circuit. I should here account for the occasion of that famous practice of surrenders and renewals of charters, and of *quo warranto's* against some corporations;

which, at first, moved from some gentlemen of Dorsetshire and Devonshire, provoked by the impudent and audacious behaviour of some corporations, and, through his lordship, came to his majesty's ear. But all this is inserted in the Examen; where the whole will appear.

191. As to the ordinary business of the assizes (especially on the crown side) he was never easy till, by examining over and over, and over again, asking parties questions, as attorneys, and every one that he thought could help to clear up an intricate fact; and scarce gave over till he had brought it to so clear a state, as that the audience should think as he declared. He had certain marks or notes, by means of which, however people shifted and prevaricated, he concluded what the truth was; and then the work was to make it plain to every body. Of this the case of Grant, touched before, was an instance;¹ where, by the start of a speech, he concluded it true. He had also observed that men inclined to passion had more of truth than those who were unconcerned. In trials of some criminals, whose cases proved very obscure, or doubtful; as to such, especially if they were capital, he was infinitely scrupulous; but never more puzzled than when a popular cry was at the heels of a business; for then he had his jury to deal with, and if he did not tread upon eggs, they would conclude sinistrously, and be apt to find against his opinion. And, for this reason, he dreaded the trying of a witch. It is seldom that a poor old wretch is brought to trial upon that account, but there is, at the heels of her, a popular rage that does little less than demand her to be put to death: and, if a judge is so clear and open as to declare against that impious vulgar opinion, that the devil himself has power to torment and kill innocent children, or that he is pleased to divert himself with the good people's cheese, butter, pigs, and geese, and the like errors of the ignorant and foolish rabble, the countrymen (the triers) cry, this judge hath no religion, for he doth not believe witches; and so, to show they have some, hang the poor wretches. All which tendency to mistake requires a very prudent and moderate carriage in a judge, whereby to convince, rather

¹ See § 168, above.

by detecting of the fraud, than by denying authoritatively such power to be given to old women.

192. His lordship was somewhat more thoughtful upon this subject; because that, in the year in which Mr. Justice Raymond was his co-judge in that circuit,¹ two old women were hurried out of the country to be tried at Exeter for witchcraft; and the city rang with tales of their preternatural exploits, as the current of such tattle useth to overflow. Nay, they went so far as to say that the judges' horses were at a stand, and could not draw the coach up the Castle Lane: all which the common sort firmly believed. It fell out that Raymond sat on the crown side there; which freed his lordship of the care of such trials. But he had really a concern upon him at what happened; which was, that his brother Raymond's passive behaviour should let those poor women die. The cases were so far clear, viz. that the old women confessed, and owned in court, that they were witches.² These were two miserable old creatures, that, one may say, as to sense or understanding, were scarce alive; but were overwhelmed with melancholy, and waking dreams, and so stupid as no one could suppose they knew either the construction or consequence of what they said. All the rest of the evidence was trifling. I, sitting in the court the next day, took up the file of informations, taken by the justices, which were laid out upon the table, and against one of the old women, read thus:—"This informant saith he saw a cat leap in at her (the old woman's) window, when it was twilight; and this informant farther saith, that he verily believeth the said cat to be the devil, and more saith not." The judge made no nice distinctions,

¹ Sir Thomas Raymond, raised to the Bench in 1679, and died 14 July, 1633.

² See *Howell's State Trials*, vol. viii. p. 1018, which appears to be the case of the witches here alluded to. According to the report there, both the criminals confessed their dealings with the devil. Temperance Lloyd, on being asked whether she had ever seen the devil, and of what shape and colour he was, answered, "Black, like a bullock!" In her examination before the magistrates, she had given a different account, and affirmed that he appeared to her "in the shape or likeness of a black man of about the length of her arm; that his eyes were very big, and that he hopped or leaped in the way before her." The proceedings in this case exhibit a most extraordinary instance of the wildest self-delusion.

as how possible it was for old women in a sort of melancholy madness, by often thinking in pain, and want of spirits, to contract an opinion of themselves that was false; and that their confession ought not to be taken against themselves, without a plain evidence that it was rational and sensible, no more than that of a lunatic, or distracted person; but he left the point upon the evidence fairly (as they call it) to the jury, and they convicted them both, as I remember; but one most certainly was hanged.

193. The first circuit his lordship went westward, Mr. Justice Rainsford, who had gone former circuits there, went with him;¹ and he said that, the year before, a witch was brought to Salisbury, and tried before him. Sir James Long came to his chamber, and made a heavy complaint of this witch, and said that if she escaped, his estate would not be worth any thing; for all the people would go away. It happened that the witch was acquitted, and the knight continued extremely concerned; therefore the judge, to save the poor gentleman's estate, ordered the woman to be kept in gaol, and that the town should allow her 2*s.* 6*d.* per week; for which he was very thankful. The very next assizes, he came to the judge to desire his lordship would let her come back to the town. And why? They could keep her for 1*s.* 6*d.* there; and in the gaol, she cost them a shilling more,

194. His lordship had not the good fortune of escaping all business of that kind; for at Taunton-Dean he was forced to try an old man for a wizard; and, for the curiosity of observing the state of a male witch or wizard, I attended in the court, and sat near where the poor man stood. The evidence against him was, the having bewitched a girl of about thirteen years old: for she had strange and unaccountable fits, and used to cry out upon him, and spit out of her mouth straight pins; and, whenever the man was brought near her, she fell in her fits, and spit forth straight pins. His lordship wondered at the straight pins, which could not be so well couched in the mouth as crooked ones; for such only used to be spit out by the people bewitched. He examined the witnesses very tenderly and carefully, and

¹ Probably 1676.

so as none could collect what his opinion was ; for he was fearful of the jurymen's precipitancy, if he gave them any offence. When the poor man was told he must answer for himself, he entered upon a defence as orderly and well expressed as I ever heard spoke by any man, counsel, or other ; and if the attorney-general had been his advocate, I am sure he would not have done it more sensibly. The sum of it was malice, threatening, and circumstances of imposture in the girl ; to which matters he called his witnesses, and they were heard. After this was done, the judge was not satisfied to direct the jury before the imposture was fully declared, but studied, and beat the bush awhile, asking sometimes one and then another, questions as he thought proper. At length he turned to the justice of peace that committed the man, and took the first examinations, and " Sir," said he, " pray will you ingenuously declare your thoughts, if you have any, touching these straight pins which the girl spit ; for you saw her in her fit ? " Then, " My lord," said he, " I did not know that I might concern myself in this evidence, having taken the examination, and committed the man. But, since your lordship demands it, I must needs say I think the girl doubling herself in her fit, as being convulsed, bent her head down close to her stomacher, and, with her mouth, took pins out of the edge of that, and then, righting herself a little, spit them into some by-standers' hands." This cast an universal satisfaction upon the minds of the whole audience, and the man was acquitted. As the judge went down stairs, out of the court, a hideous old woman cried, " God bless your lordship." " What's the matter, good woman ? " " My lord," said she, " forty years ago, they would have hanged me for a witch, and they could not ; and, now, they would have hanged my poor son."

195. One year his lordship, concluding at Bristol, made a visit at Badminton to the duke of Beaufort, and staid about a week. For the duke was descended from a North of his lordship's family, viz. one of the Lord Edward North's daughters,¹ whom a lineal ancestor of his grace

¹ William 3rd Earl of Worcester married Christian 3rd daughter of Edward 1st Lord North. From them, in the *fourth* generation, was

married. So besides conformity of principle, with respect to the public, they were, by this relation, qualified for mutual respect and honour. I mention this entertainment as a handle of showing a princely way of living, which that noble duke used, above any other, except crowned heads, that I have had notice of in Europe; and, in some respects, greater than most of them, to whom he might have been an example. He had above £2000 per annum in his hands, which he managed by stewards, bailiffs, and servants; and, of that, a great part of the country, which was his own lying round about him, was part, and the husbandmen &c. were of his family;¹ and provided for in his large expanded house. He bred all his horses, which came to the husbandry first colts, and from thence, as they were fit, were taken into his equipage: and, as by age or accident they grew unfit for that service, they were returned to the place from whence they came and there expired; except what, for plenty or unfitness, were sold or disposed of. He had about two hundred persons in his family, all provided for; and in his capital house, nine original tables covered every day: and, for the accommodation of so many, a large hall was built, with a sort of alcove at one end, for distinction; but yet the whole lay in the view of him that was chief, who had power to do what was proper for keeping order amongst them; and it was his charge to see it done. The tables were properly assigned; as, for example, the chief steward with the gentlemen and pages; the master of the horse with the coachmen and liveries; an under steward with the bailiffs and some husbandmen; the clerk of the kitchen with the bakers, brewers, &c. all together; and other more inferior people, under these, in places apart. The women had their dining-room also, and were distributed in like manner. My lady's chief woman with the gentlewomen; the house-keeper with the maids and some others. The method of governing this great family was admirable and easy, and such as might have been a pattern for any management whatever. For if the duke or duchess (who concerned herself much more than

descended Henry 1st Duke of Beaufort. Sir Francis North, the Lord Keeper, was descended in the *fifth* generation from Edward Lord North.

¹ "Family"—in the sense of "household."

he did ; for every day of her life in the morning she took her tour and visited every office about the house, and so was her own superintendent) observed any thing amiss or suspicious, as a servant riding out or the like, nothing was said to that servant ; but his immediate superior, or one of a higher order, was sent for who was to inquire and answer if leave had been given or not ; if not, such servant was straight turned away. No fault of order was passed by ; for it may be concluded there are enough of them that pass undiscovered. All the provisions of the family came from foreign parts as merchandise. Soap and candle were made in the house ; so likewise the malt was ground there ; and all the drink, that came to the duke's table, was of malt sun-dried upon the leads of his house. Those are large, and the lanthorn is in the centre of an asterisk of glades, cut through the wood of all the country round, four or five in a quarter, almost *apert de view*. Divers of the gentlemen cut their trees and hedges to humour his vists ; and some planted their hills in his lines, for compliment, at their own charge. All the trees, planted in his parks and about, were fenced with a dry wall of stone, taken out where the tree was set. And with all this menagery and provision, no one, that comes and goes for visits, or affairs with the duke (who was Lord Lieutenant of four or five counties, and Lord President of Wales) that could observe any thing more to do there, than in any other nobleman's house. So little of vain ostentation was to be seen there. At the entrance, where coaches ordinarily came in, the duke built a neat dwelling-house, but pompous stables, which would accommodate forty horses, as well as the best stables he had. This was called the inn, and was contrived for the ease of the suitors, as I may call them ; for, instead of half a crown to his servants at taking horse, sixpence there, for form, served the turn ; and no servant of his came near a gentleman's horse ; but they were brought by their own servants, except such as lodged, whose equipages were in his own stables.

196. As for the duke and duchess, and their friends, there was no time of the day without diversion. Breakfast in her gallery that opened into the gardens ; then, perhaps, a deer was to be killed, or the gardens, and parks with the

several sorts of deer, to be visited; and if it required mounting, horses of the duke's were brought for all the company. And so, in the afternoon, when the ladies were disposed to air, and the gentlemen with them, coaches and six came to hold them all. At half an hour after eleven the bell rang to prayers, so at six in the evening; and, through a gallery, the best company went into an aisle in the church (so near was it), and the duke and duchess could see if all the family were there. The ordinary pastime of the ladies was in a gallery on the other side, where she had divers gentlewomen commonly at work upon embroidery and fringe-making; for all the beds of state were made and finished in the house. The meats were very neat, and not gross; no servants in livery attended, but those called gentlemen only; and in the several kinds, even down to the small beer, nothing could be more choice than the table was. It was an oblong, and not an oval; and the duchess, with two daughters only, sat at the upper end. If the gentlemen chose a glass of wine, the civil offers were made either to go down into the vaults, which were very large and sumptuous, or servants at a sign given, attended with salvers, &c., and many a brisk round went about; but no sitting at a table with tobacco and healths, as the too common use is. And this way of entertaining continued a week, while we were there, with incomparable variety; for the duke had always some new project of building, walling, or planting, which he would show, and ask his friends their advice about; and nothing was forced, or strained, but easy and familiar, as if it was, and really so I thought it to be, the common course and way of living in that family.

197. One thing more I must needs relate, which the duke told us smiling; and it was this. When he was in the midst of his building, his neighbour, the Lord Chief Justice Hales, made him a visit;¹ and observing the many contrivances the duke had for the disposing of so great a family, he craved leave to suggest one to him, which he thought would be much for his service; and it was, "to

¹ Sir Matthew Hale lived at Alderley, eight miles from Badminton; he died on Christmas Day, 1676.

have but one door to his house, and the window of his study, where he sat most, open upon that." This shows how hard it is for even wise and learned men to consider things without themselves. The children of the family were bred with a philosophical care. No inferior servants were permitted to entertain them, lest some mean sentiments or foolish notions and fables should steal into them; and nothing was so strongly impressed upon them as a sense of honour. Witness the Lord Arthur, who, being about five years old, was very angry with the judge for hanging men. The judge told him that, if they were not hanged, they would kill and steal. "No," said the little boy, "you should make them promise upon their honour, they will not do so, and then they will not." It were well if this institutionary care of parents were always correspondent in the manners of all the children; for it is not often found to prove so.

198. But now to return to his lordship, and his circuiting. He took an opportunity, one summer, to turn by the North, which begins at York, and concludes at Lancaster; but, in winter, it is usual to omit the counties of Durham, Northumberland, Cumberland, and Westmoreland. His lordship was curious to visit the coal mines in Lumly Park, which are the greatest in the North, and produce the best coal, and, being exported at Sunderland, are distinguished as of that place. These collieries had but one drain of water drawn by two engines, one of three stories, the other of two. All the pits, for two or three miles together, were drained into those drains. The engines are placed in the lowest places, that there may be the less way for the water to rise; and if there be a running stream to work the engines it is happy. Coal lies under the stone; and they are twelve months in sinking a pit. Damps, or foul air, kill insensibly; sinking another pit, that the air may not stagnate, is an infallible remedy. They are most in very hot weather. An infallible trial is by a dog; and the candles show it. They seem to be heavy sulphurous air not fit for breath; and I have heard some say that they would sometimes lie in the midst of a shaft, and the bottom be clear. The flame of a candle will not kindle them so soon as the snuff; but they

have been kindled by the striking fire with a tool. The blast is mighty violent; but men have been saved by lying flat on their bellies. When they are by the side of a hill, they drain by a level carried a mile under ground, and cut through rock to the value of £5,000 or £6,000, and where there is no rock it is supported with timber.

199. In the way towards the North his lordship visited the Lord Rutland at Belvoir castle, where the prospect is much as that is from Windsor; but hath this advantage, that the subjacent country is most of it chase ground, and that is so detrimental that the people offered £1,500 per annum, rent charge of inheritance, to be released; but that is kept against an exigence in the family (if any should happen, and so to preserve a better estate. There was little of curiosity to be observed in the city of York, besides the metropolitan church, which is a stately one indeed, only disgraced by a wooden roof framed archwise, but manifestly seen. The gentry affect to walk there to see and be seen; and the like custom is used at Durham. In these churches, wind music was used in the choir; which I apprehend might be introduced at first for want of voices, if not of organs; but, as I hear, they are now disused. To say the truth, nothing comes so near or rather imitates so much an excellent voice, as a cornet pipe; but the labour of the lips is too great and it is seldom well sounded. His lordship was well enough known in all the choirs wherever he came; and the boys failed not to bring him a fair book of the anthem and service, and sometimes the score if they had it, expecting, as they always had, a compensation for their pains. At Durham, the bishop entertained,¹ who is a sort of sovereign, or count palatine, there, but much shrunk below the ancient authority and dignity. All process of law is original, without dependence on London. The cathedral church shows the most of gothic antiquity of any in England; and the marks of old ruin are to be seen by the different orders of the supports: those, which are very

¹ Dr. Nathaniel Crew was Bishop of Durham at this time, having been translated from Oxford in 1674. He continued Bishop of Durham till 1722, being then 88 years old.

large and round, with semicircular arches, are the most antique. The bishop carried his lordship to his ancient seat called Auckland, which is to Durham as Croydon to Lambeth; and the entertainment was in all points, while his lordship stayed in that palatinate, as I may term it, truly great and generous. And thence the road lay to Newcastle over a very delightful plain, having Lumly castle in view on the left hand most part of the way.

200. His lordship's entertainment at Newcastle was very agreeable, because it went most upon the trades of the place, as coal-mines, salt-works and the like, with the wonders that belonged to them; and the magistrates were solicitous to give him all the diversion they could: and one was the going down to Tynemouth castle in the town barge. The equipment of the vessel was very stately; for, a-head, there sat a four or five drone bagpipe, the North-country organ, and a trumpeter astern; and so we rowed merrily along. The making salt I thought the best sight we had there. The other entertainment was a supper in the open air upon an island in the Tyne somewhat above the town; and all by the way of ligg and sit upon the ground: but provisions for a camp and wine of all sorts very fine. In short, all circumstances taken together, the cool of the evening, the verdant flat of the island with wood dispersed upon it and water curling about us, view of the hills on both sides of the river, the good appetites, best provisions, and a world of merry stories of the Scots (which by the way makes a great part of the wit in those parts), made the place very agreeable, where every one walked after his fancy and all were pleased.

201. Some of the aldermen related strange histories of their coal-works: and one was by Sir William Blacket¹ who cut into a hill in order to drain the water, and conquered all difficulties of stone, and the like, till he came to clay, and that was too hard for him; for no means of timber, or walls, would resist, but all was crowded together; and this was by the weight of the hill bearing upon a clay that yielded. In this work he lost £20,000.

¹ M.P. for Newcastle; created a Baronet by Charles II. in 1673; ancestor of Sir Edward Blackett, of Matfen Hall, Northumberland.

Another thing that is remarkable is their way-leaves; for when men have pieces of ground between the colliery and the river, they sell leave to lead coals over their ground; and so dear that the owner of a rood of ground will expect £20 per annum for this leave. The manner of the carriage is by laying rails of timber from the colliery down to the river, exactly straight and parallel; and bulky carts are made with four rowlets fitting these rails; whereby the carriage is so easy that one horse will draw down four or five chaldron of coals, and is an immense benefit to the coal merchants. Another advantage of the coasters upon the river was showed his lordship: and that was what they call ballast wharfs. Any land owner may make that which they call a quay next to the river and sell leave to ships to throw out their ballast there, which the town will not permit to be tossed into the river; and the loading of coals is ballast enough to return with home towards London. So it seems that the shifting of the ballast, out and home, is no small incumbrance to the coal-trade.

202. From Tynemouth his lordship, by invitation, went to dine at Seaton Delaval. Sir Ralph Delaval¹ entertained us exceeding well; and not so much with eating and drinking, which appertains properly to the brute, and not to the man, but with very ingenious discourse, and showing to us many curiosities, of which he himself was author, in that place. The chief remarkable, there, was a little port, which that gentleman, with great contrivance, and after many disappointments, made for securing small craft that carried out his salt and coal; and he had been encouraged in it by King Charles the Second, who made him collector and surveyor of his own port, and no officer to intermeddle there. It stands at the mouth of a rill (as it is called) of water, which, running from the hills, had excavated a great hollow, in the fall, as it ran. The ground, at the sea, is a hard impenetrable flat rock; and, for cover of the vessels, which else, in the rage, must be dashed to pieces, Sir Ralph had built, or rather often rebuilt, a pier of stone that fended off the surge to the north-east and, at high water, gave

¹ Created a Baronet by Charles II. in 1660. The baronetcy became extinct during the last century.

entrance near a little promontory of the shore turning in by the north ; and, at low water, the vessels lay dry upon the rock. This had been built of square stone with and without cement ; but all was heaved away with the surge ; and for a great while nothing could be found strong enough to hold against the lifting and sucking of the water. At length, Sir Ralph, at an immense cost, bound every joint of the stone, not only laterally but upright, with dovetails of heart of oak let into the stone ; and that held effectually : for if the stones were lifted up they fell in their places again. This little harbour was apt to silt up with the sea sand ; for remedying of which he used the back water of his rill and that kept the channel always open : and for that end he had an easy and sure device ; which was sluice-gates built across the channel of the rill which, during tide of flood, were shut and so the water gathered to a great head above till low water ; and then the sluices opened let the gathered water come down all at once, which scoured away the sand that every tide lodged upon the rock, and washed it as clean as a marble table. All this we saw, with his salt-pans at work about it, and the petit magazines of a marine trade upon the wharf : and so he reaped the fruits of his great cost and invention ; and if in the whole the profit did not answer the account, the pleasure of designing and executing, which is the most exquisite of any, did it.

203. I must not omit one passage which showed the steady constancy of that gentleman's mind ; which was that, at the beginning of dinner, a servant brought him a letter, wherein was an account of a bag of water which was broke in his greatest colliery. Upon which, folding up the letter, said he, "My lord, here I have advice sent me of a loss, in a colliery, which I cannot estimate at less than £7,000 ; and now you shall see if I alter my countenance or behaviour from what you have seen of me already." And so fell to discoursing of these bags of water and the methods to clear them, as if the case had been another's and not his own. He said his only apprehension was that the water might come from the sea ; and "then," said he, "the whole colliery is utterly lost : else, with charge, it will be recovered." Whereupon he sent for a bottle of the water, and finding it not saline as from the sea was well

satisfied. Afterwards we inquired if the water was conquered, and we were told it proved not so bad as he expected. For it seems that although £1,700 was spent upon engines, and they could not sink it an inch, yet £600 more emptied it; so that it had no more than the ordinary springs; and, in about six weeks, he raised coal again. He said that chain pumps were the best engines, for they draw constant and even; but they can have but two stories of them, the second being with an axle-tree of seven or eight fathom; and the deepest story is wrought by buckets and a wheel and ropes with the force at the top.

204. The county of Northumberland hath been exceedingly infested with thieving of cattle, which is the remains of the Border trade, since the union with Scotland after the way used in time of peace before. For as in Italy, the murderer, running into the next territory, was safe: so here they stole on either side, and the other under a different jurisdiction was an asylum. This was so great a mischief that all the considerable farmhouses (the houses of gentlemen were castles of course) were built of stone in the manner of a square tower with an overhanging battlement, and underneath the cattle were lodged every night. In the upper room the family lodged, and, when the alarm came, they went up to the top, and, with hot water and stones from the battlement, fought in defence of their cattle. The advantage of the union was so great to these countries that the Lord Grey of Werke's estate, which before was not above £1,000 per annum, hath since risen to £7,000 or £8,000, which is at least a sixfold improvement.¹ After the union, to prevent this thieving trade, the crown sent commissioners of oyer and terminer directed to an equal number of English and Scotch, extending to certain limits on each side of the Border; and being continued it is therefore called the Border commission. And these meet in their sessions, and hang up at another rate than the assizes; for we were told that, at one sessions, they hanged eighteen for not reading *sicut clerici*.

205. This hath made a considerable reform; but yet

¹ Roger North's eldest brother, Charles Lord North, married Catherine, daughter of William Lord Grey of Werke.

there is need of an officer they call a country keeper, who hath a salary from the country and is bound to make good all the stolen cattle unless found out and restored. When his lordship was there, one Mr. Widdrington was keeper with £500 per annum salary. The country is yet very sharp upon thieves; and a violent suspicion there is next to conviction. When his lordship held the assizes at Newcastle, there was one Mungo Noble (supposed to be a great thief) brought to trial before his lordship, upon four several indictments; and his lordship was so much a South country judge as not to think any of them well proved. One was for stealing a horse of a person unknown: and the evidence amounted to no more than that a horse was seen feeding upon the heath near his shiel (which is a cottage made in open places of turf and flag) and none could tell who was the owner of it. In short, the man escaped much to the regret of divers gentlemen who thought he deserved to be hanged; and that was enough. While the judge at the trial discoursed of the evidence and its defects, a Scotch gentleman upon the bench who was a Border commissioner made a long neck towards the judge, and "My laird," said he, "send him to huzz and yees neer see him mere." This country was then much troubled with Bedlamers. One was tried before his lordship for killing another of his own trade whom he surprised asleep, and, with his great staff, knocked on the head; and then bragged that he had given him "a sark full of sere benes;" that is a shirt full of sore bones. He would not plead to the country, because there were horsecopers amongst them, till the press¹ was ready; and then he pleaded and was at last hanged. They were a great nuisance in the country, frightening the people in their houses and taking what they listed: so that a small matter with the countrymen would do such a fellow's business.

206. From Newcastle, his lordship's route lay to Carlisle. The Northumberland sheriff gave us all arms; that is, a dagger, knife, pen-knife, and fork, altogether. And because the hideous road along by the Tyne, for the many and sharp turnings, and perpetual precipices, was for

¹ The punishment of the *peine forte et dure*, abolished by the statute of 12 Geo. III. c. 20.

a coach, not sustained by main force, impassable, his lordship was forced to take horse, and to ride most part of the way to Hexham. We were showed where coal-mines burnt under ground; but could discern nothing of it, besides the deadness of all plants there. We were showed the Picts' wall; but it appeared only as a range, or bank of stones all overgrown with grass, not unlike the bank of the Devil's Ditch at Newmarket, only without any hollow, and nothing near so big. Here his lordship saw the true image of a Border country. The tenants of the several manors are bound to guard the judges through their precinct; and out of it they would not go, no, not an inch, to save the souls of them. They were a comical sort of people, riding upon negs, as they call their small horses, with long beards, cloaks, and long broad swords, with basket hilts, hanging in broad belts, that their legs and swords almost touched the ground; and every one, in his turn, with his short cloak, and other equipage, came up cheek by jowl, and talked with my lord judge. His lordship was very well pleased with their discourse; for they were great antiquarians in their own bounds.

207. We came, at length, to Hexham, formerly a metropolis of a famous shire of that name. From the entertainment and lodging there it might be mistaken; but whether for a Scotch or for a Welsh town may be a nice point for the experienced to determine. The rest of the country to Carlisle was more pleasant and direct; and, bating hunger and thirst, which will not be quenched by any thing to be fastened upon there but what the bounty of the skies affords, was passed over with content. At Carlisle, nothing extraordinary occurred but good ale and small beer which was supplied to their lordships from the prebends' houses; and they boasted of brewing it at home: but, being asked with what malt? they made answer that it was South country malt. For, to say truth, the bigg (viz. a four-rowed barley) is seldom ripe; and the oats, which they call yeats, are commonly first covered with snow. In Cumberland the people had joined in a sort of confederacy to undermine the estates of the gentry by pretending a tenant right; which there is a customary estate not unlike our copyholds: and the verdict was sure for the tenants'

right whatever the case was. The gentlemen, finding that all was going, resolved to put a stop to it by serving on common juries. I could not but wonder to see pantaloons and shoulder-knots crowding among the common clowns; but this account was a satisfaction.

208. From hence we went, through a plain but stony road, in the view of hideous mountains called Foulness Hills, to Appleby in Westmoreland. There is little of a shire town to be found there, being but as it were a village; only there is the castle an ancient fortified seat of the Earl of Thanet's. Not long before the judge came there the Countess of Pembroke made it her ordinary habitation: but she was then dead.¹ She was a magnificent and learned lady, and had named divers of the towers of her castle; one was Pendragon's tower, another Julius Cæsar's tower. The Earl of Thanet is the hereditary sheriff of that county; the only one, of that quality, in England, and had ordered a sumptuous entertainment to be given by one Mr. Gambetes, his steward, to the judges. His lordship was very much pleased with the inscriptions the countess had made in divers places about the castle, and under old pictures, containing much of history, and pedigree of the family. And it was said that Hales, afterwards chief justice, assisted her in the perusal and methodising of her evidences and muniments, and made her fair extracts of them. I must mention one thing more, for the honour of this incomparable lady; and that was her generosity. It was affirmed, by those that knew it to be true, that no person ever made her a visit, that went away without a present ingeniously contrived, according to the quality of the person. And we were sorry we could not be witnesses of that piece of grandeur.

209. There was a high feud, that had been carried on in this country with a world of heat, between the Musgraves and their friends on the one side, and the Lowthers,

¹ This was the illustrious Anne, daughter and heir of George Earl of Cumberland. She was the pupil of Daniel the poet, to whom she erected a monument in Beckington Church, Somerset. She died 22 March, 1678, aged 87. The monument to Edmund Spenser in Westminster Abbey was set up at her expense. There is a good account of her in *Whitaker's History of Craven*, p. 383 *et seq.* (Ed. 1878.)

Fletchers, and divers other gentlemen on the other. And if one may borrow a distinction of much later date, I may say the former were Tory, and the other Whig. It is certain that the Musgraves were envied by their neighbours;¹ for they were courtiers, and having been cavaliers, and also very serviceable in parliament (it seems that some so early knew how to value their services there), were favoured, having the government of Carlisle a sort of frontier, and also were farmers at easy rates of a duty upon cattle out of Scotland; which duty, some said, as they had ordered the matter was gained from the parliament on purpose to be granted to them whose project it was. The difference formed itself upon the division of the country (if I may borrow the words) into Cisalpine and Transalpine regions; and the question was in which of these the general sessions should be held; each side holding stiffly to his own convenience: and sometimes they had the general quarter sessions at both places which was very absurd. And this dispute had its purlieu fraught with general and original slanders, raised on either side against the other; which ran so high that the whole country ran into the faction: good people were scandalised and the king himself importuned and troubled about it. And his majesty was pleased to recommend the matter to his lordship to compose in his circuit if he could. At his arrival at Appleby he appointed the gentlemen to attend him; which they did. The Musgraves spoke for themselves; the other side had a counsel but left little to him; but Sir John Lowther, since Lord Lonsdale,² managed most on that side. His lordship gave neither a victory over the other (which in the North is much desired), but proposed an expedient which was then new, though, of later years, much in use in divers counties. And it is expressed in a memorandum

¹ Sir Philip Musgrave, 2nd Baronet, did very good service to the royal cause during the rebellion, as may be read in *Clarendon*, and received scant reward for the sacrifices he made. He died in Feb. 1677. His descendant is still seated at Eden Hall, Cumberland. The Lowthers are now represented by Lord Lonsdale.

² Some account of this very sensible man and good patriot is prefixed to his curious *Memoir of the reign of James II.*, printed by the direction of the second Earl of Lonsdale.

his lordship took in an almanack, viz. "There being a controversy concerning holding the quarter sessions at two places in Westmoreland, Mr. Baron Berty¹ and myself, upon conference with all the justices, delivered our opinions that there could be but one general quarter sessions, in one county for one quarter; and that, if conveniency required attendance at other places, it must be by way of adjournment: and we proposed that way; to which they readily agreed. And we advised that at the close of every sessions order should go for summoning the next, which should be done by writ under the seal of the court: and we directed the form of a precept, 1676." And thus this mighty difference was composed, and all the business of the sessions hath proceeded accordingly ever since.

210. His lordship had a singular pleasure in viewing from Appleby Castle the vast mountains that surround it; and particularly one called Morton Pike which rose in the low country in the shape of a heap of corn rounded up, and seemed as green and smooth as a bowling-green: one would be almost ready to leap from the castle upon it so near it seemed, but was in truth half a day's journey off. His lordship's next remove was to Lancaster; but he lodged at Kendal by the way. That is a scattered town in an inclosed country very stony and dirty; and we could not without chagrin observe the common people walk barefoot and the children leaping as if they had hoofs, and those shod with iron; but it is almost the same all over the North. This town so situated and out of the way, is yet celebrated for much woollen manufacture sent from thence to most parts of England. They could write to most trading towns and have answers by the packs (for all is horse carriage) with returns (time being allowed) as certain as by the post. From hence to Lancaster is a very rugged journey, and upon the tops of some hills one would not give a groat for all the land he could see; it being nothing but hard and impenetrable rock white as snow; but in the valleys there was fertility enough. Nothing happened to his lordship at Lancaster worth noting. This county (as that of Durham) is palatine, but more august

¹ One of the four judges dismissed from their office, 29th April, 1679.

and regular; and all the proceedings commencing and ending there afforded more law business than other counties that deal only by *nisi prius*; which made his stay longer. The chief curiosity of the place is the magnificent old castle where the great John of Gaunt kept his court; and now in the great hall the assize courts are placed. There is enough left to show that, in such old times, their structures and their minds also were as great and magnificent as most ages since have had reason to boast of.

211. In the return homewards from Lancaster, his lordship took all the advantage he could of seeing great towns and places of note. He stayed some days with Sir Roger Bradshaw,¹ whose lordship is famous for yielding the Canal (or Candle) coal. It is so termed, as I guess, because the manufacturers in that country use no candle but work by the light of their coal fire. The property of it is to burn and flame till it is all consumed, without leaving any cinder. It is lighted by a candle like amber, and the grate stands not against the back of a large chimney, as common coal grates; but in the middle, where ballads are pasted round, and the folk sit about it working or merry-making. His lordship saw the pits where vast piles of that coal were raised: and it is pity the place wants water carriage; else London would be in the better part served with it. But the greatest wonder his lordship saw was that which they call the burning well. The manner of it is this. First, in some place where they know the sulphurous vapour perspires (often in a ditch) they dig up a turf and clap it down in its place again; and then they are ready for projection. When the show-company are come, a man takes up the turf and after a little puffing of a brown paper match gives fire, and instantly the hole is filled with a blue spirituous flame like brandy. It seemed to waste and I believe would not have burnt in that manner long; but while it was burning they put water in the hole, and the flame continued upon the water as if it had been spirits. And some people said they used to boil eggs there. That

¹ Sir Roger Bradshaw, of Haigh, created a Baronet 17th Nov., 1679. He was an ardent loyalist, and deserves to have been named in the *Dictionary of National Biography*. He died in 1684. The Baronetcy became extinct in 1731. (*Burke's Extinct Baronetage*.)

which seemed most strange, was that the vapour should come through the water and burn, and no bubbling of the water appear. It seems to infer that the vapour permeates the body of the water, as water through sands. But I question if the body were not fluid, but rigid as glass whether the vapour would so easily pass it: for the perpetual action of the fluid parts facilitates the passage. And it is some demonstration how easily the effluvia of a magnet may permeate glass, metals, and every palpable substance we are acquainted with, as we continually observe of them.

212. His lordship pitched next at the city of Lichfield; and, as his use was, took the advantage of spending his Sunday there. I touched before how much affected his lordship was with the solemn church service in the cathedrals: which is not to be wondered at considering how he was in general devoted to music; and he could not be insensible where so good use was made of it. For the service was performed in that church with more harmony and less huddle than I have known it in any church in England, except of late in St. Paul's. This cathedral church was beaten to pieces in the late wars; but, by the zeal and diligence of Bishop Hacket, was rebuilt as entirely as if it had never been injured;¹ and chiefly with the money he raised by barefaced begging. No gentleman lodged, or scarce baited in the city, to whom he did not pay his respects by way of visit, which ended in plausible entreaties for some assistance towards rescuing his distressed church from ruin. And that he brought about so effectually, and adorned his choir so completely and politely, as I have not seen a more laudable and well-composed structure for the purpose, in the country, any where. He did not live to finish the palace; nor did his successor Woods, though rich, willingly do any thing to it. Sir Simon Degg, a gentleman of that country, to incite him to undertake it, dedicated to him a book entitled "The Parson's Counsellor;"² and there, in the preface, compliments him upon the subject of having most nobly restored to the

¹ Bishop (John) Hacket died in 1670. The rebuilding of the cathedral was "chiefly" due to the private munificence of the Bishop himself.

² The Book, *dedicated to Bishop Wood*, was published in 1676.

church, that demolished fabrick, for the good of his successors; although, at that time, he had not so much as turned over one single stone towards it. But I think the good Archbishop Sancroft, by his authority, forced him, at last, to do something, though full against his will.¹ So vast is the difference in the moral characters of men under the same call and obligation.

213. It was in this circuit that, as his lordship passed along, divers gentlemen showed him circular news letters that came to them;² and he perceived that the scope of these was to misrepresent and misconstrue all the public transactions of state, and might have been properly styled fanatic news letters, contrived and dispatched to divers places to stir up sedition. And, upon his lordship's enquiry, he was told that they came from Mr. Coleman, then the Duke of York's secretary.³ His lordship, at his return, made a representation to the king of this news letter coming from such a person, and the ill consequences of it. Whereupon Mr. Coleman was turned out of the duke's service; but never much blamed; for he was afterwards made the Duchess of York's secretary. Which shows two things: 1. That notwithstanding all the fanatic noise at that time against popery, the papists and fanatics joined in proceedings to weaken and destroy the established government. 2. That what Coleman did was by direction founded upon the policy of the Roman Catholic party at that time.

214. His lordship went but once as judge in his own

¹ He was suspended by Sancroft from his episcopal dignity. The means by which Wood obtained his see were equally disgraceful to him and to the court. Having procured the marriage of his niece, a wealthy heiress, with the Duke of Southampton, the son of the Duchess of Cleveland, he was rewarded with the bishopric of Coventry and Lichfield. His refusal to reside upon his diocese, and his gross neglect of all his duties, and, amongst others, the repair of the episcopal palace, for which he had received money from the heirs of his predecessor, ultimately led to his suspension. (See *D'Oyley's Life of Archbishop Sancroft*, vol. i. p. 194.)

² See *Examen*, p. 133.

³ See some account of him by Burnet. (*Own Time*, vol. ii. p. 629.) He was one of the first sufferers in the Popish Plot. See his trial (*Howell's State Trials*, vol. vii. p. 1.

country, that is the Norfolk circuit. But there, besides the universal honour and respect he had in those parts, where had been the scene of his first and rising practice, I know little to note more than what in such cases is obvious to every one's imagination. There is a piece of antiquity in Middleton near Lynn, which, though it stands in sight of that great town is not taken notice of by any of the topographers. It is called Middleton Tower; but it is only a great gatehouse somewhat like that old one (if it be standing) at Hampton Court. There are two large turrets, and a broad flat between, through which the entrance is through a lofty arch: the first floor was a vault and a very large room above. There appear the footsteps of a very large palace, being a square court built round to it, all within a moat. It formerly belonged to the Lord Scales, and stands now in a valley so low that the ground about it is little better than moor. By which we see the alterations of places that time hath made; for without doubt, anciently, the valley was good land and watered only with a little rivulet that runs in the middle of it and not so silted up as it is now; and for unwholesomeness become almost uninhabitable.

215. But now, to step a little back, his lordship, coming out of his Western circuits, had two adventures. The one was meeting the king and parliament at Oxford. [March, 1681.] His time would not let him arrive at the opening of it, but two or three days after; so that the place was to him as a theatre; and he might have asked, what play was to be acted? He knew no more of the intrigues on foot than any stranger did, much less dreamt of a positive armament against the king, as manifestly showed itself there; which disposed the king to take advantage of the difference between the two houses, upon the matter of Fitzharris; and, after five days sitting, to dissolve them.¹ This sudden and resolute act the party did not expect; and, instead of being aggressors, as they intended to be, they were passive, and, as unhappy defendants, shamefully scattered and confounded. For they thought themselves so considerable,

¹ An amusing account of the circumstances attending this dissolution is given in the *Examen*, p. 104.

and the king so desirous of his quiet, that he would not (durst not, as some said) have dissolved them. His lordship was conveniently situated in Trinity College, his lady being one of the coheirs of the founder of it. He kept a table there, and his family were allowed to battle in the butteries. He was very much at ease about company; for none came near him but real friends and acquaintance: for all the factious people looked malicious and sour, and herded together. The days passed easily; for, as I said, we were in a theatre; no stirring without meeting acquaintance and news.

216. His next adventure was this. When he was in his Western circuit, he and his brother Jones, the other judge, were, with the judges of the Midland circuit, put into a commission of oyer and terminer extraordinary, for the trying of Stephen College: an account of which, with a threatening letter delivered into his lordship's hands, is already set forth in the Examen;¹ so we shall pass that by, and shall only speak a little of his lordship's conduct therein. His lordship had not been long in Oxford, before word was brought to him that some stranger had put a roll of papers into his (College's) hands. Those were ordered to be brought and inspected; and thereupon it appeared that some concerned his defence, and the testimony he was to produce at his trial. These were all delivered back to him. Others were found to be downright libels, most artfully and maliciously penned, to reflect upon the government, and tending to sedition, in the form of speeches, to be pricked in at the trial, as the cues were given. As, for instance, when Mr. Attorney hath opened the evidence, say thus—, and the like at other pauses. These were detained;² for it had been a prime jest if, under the pretence of a defence, the prisoner should be allowed to vent seditious libels, full of mutiny and reflection, to amuse the people; and so to come forth and be published in print: when, as the law then stood, they were not allowed counsel to plead, but upon question of law showed, and to be assigned, who should behave themselves mo-

¹ P. 588.

² A fuller account of Colledge's Trial is given in the Autobiography, chap. xii.

destly. Criminals, of that sort, should not have any assistance in matters of fact, but defend upon plain truth, which they know best, without any dilatories, arts, or evasions. But this was the chief, if not the only pretence of clamour against the conduct of that trial, which was with all the indulgence in form and matter that could be demanded.

217. That the defence was intended to be tumultuous, was apparent from many circumstances. I shall instance in one; which was the behaviour of one Aaron Smith, the solicitor for the prisoner.¹ His business formerly lay in the Chancery: but he took into the treason trade. He was afterwards, in the Rye Plot, sent, from the council of six, to negotiate with the Earl of Argyle in Scotland, for a rising there. He was a violent monster; and his friends, for his excuse, used to say he was half-mad; but that would not have saved his neck, if he had been caught. He took occasion to apply to the court for somewhat concerning these papers; and being answered, he stretched him over the bar, and "Have we not reason," said he, "when our lives and estates are beset here?" The Lord Chief Justice rose up, and, without any emotion, said to the clerk, "Record these words;" and sat down again. The consequence of that had been a judgement of misdemeanour, as effectual as after a common process and trial. Aaron instantly perceived what was to follow, and fell to explaining, excusing, and varying the words, which he said were not intended of the court. But the judges would not be severe upon him at present, out of tenderness to the prisoner, and not to give occasion for any to say they were prepared to fall hard upon him. But the court took security of him not to depart without leave of the court; and so he escaped, for nothing was done farther in that matter. As to the trial in general, it is in print, and will speak for itself. But this passage of Aaron Smith is not so fully represented there, as I know the truth was.

218. I shall conclude this part of my work concerning his lordship's going the circuits as judge with this note, viz. that considering to what station he came to be

¹ In the *Examen* (p. 195) he is called "one Mr. Smith, a Barrister at Law, famed for standing practice in cases of forgery, &c., and Oates's learned counsel."

advanced in trust and favour at court which made him very obnoxious to the ill effects of envy and malice of faction; nothing could have been more propitious to him than his visiting most parts of England in this manner, whereby he had the opportunity to show to all the gentry where he came his humanity as well as justice and learning in the law. And also to make, as he did, many engaging friendships with the better sort. Whereby it became impossible for the mouth of slander itself to blacken him in the opinion of the English nobility and gentry; as if he had been what the fanatics laboured to have believed of him, an arbitrary unjust judge, a slave to the court, and a papist in masquerade.

219. His lordship was ever a professor of loyalty; that is, for the legal interest and prerogative of the crown and the protestant religion as by law established: all which is comprised under the word loyalty which in that time was much in use. And as for the noisy runners about with that word in their mouths, but nothing moderate or just in their actions his lordship tolerated, and did not discourage them, because their tendency was opposite to the other extreme then termed fanaticism; and in managing all popular elections did very great service. For the common people are not taken or drawn by the reason of things, but by shows, pretensions, and noise: and the just adherents to monarchy were defamed by the characters invented and inflicted by these men, as being, at best, high-fliers for prerogative. His lordship had an universal acquaintance and diffused a sort of amity with most persons considerable in England: and all sorts of people, at times, had resort to him either upon visits or for business: he never declined discoursing freely, and made no secret of his sentiments which were entirely in favour of all just ways that supported the church and crown, and against all the oppugners of either. So that whoever came to spy upon him, got nothing but what he publicly professed. Therein he avowed his constancy to the laws that were sufficiently declared to that end; to all which no exception could be made. But yet the faction, who had the law and the protestant religion so much in their mouths, hated him heartily for it: as for a principle, of all others, the most

pernicious to their projects. Accordingly, whatever sort of people came to him, whose characters he partly knew, if they were in any respect plausible, he declined them not, hoping that if they made no impressions in their way upon him, he might make some in his way upon them: and with that design, I have known him hold long discourses with some relations and others, of the country for the most part, whom he had an esteem for, to convince them if possible how mistaken they were in having such a mean opinion of the king and his measures, as lies had inspired into them; and to persuade them that the daily reports spread abroad for such purposes, were false: and I remember most of them, with whom he had (out of a sort of friendship) taken pains, sat giving him the hearing but were not one whit moved; but, as I guess, looked upon him as a court lawyer that spoke to his point. His lordship hath recommended this demonstration to divers of them: "Keep a book, said he, "with two columns; and in one write the daily news and stories; and in the other against them, whether they prove true or false;" and he believed that not one in fifty would be found to be true. "Why then," said he, "should you let the news of the town sink at all with you?" For he found that, when they were pressed, they laid a fresh story in his dish; and so wonderful absurd as almost amazed him: as that the king had made a league with France in order to acquire an arbitrary power in England: that the king had sold to the French the ship timber out of his yards, and sent carpenters to teach the Frenchmen ship-building and the like: and if his lordship had not had an admirable temper he must have quarrelled. These were the innocents that pinned their faith upon some that would be thought of the country party in the House of Commons, who use to subtilize with those honest gentlemen, and send them away, as his lordship used to say, foxed with politics.

220. As his lordship's opinion was no secret so he had acquired a way of expressing himself habitually secure. For although all the company understood him perfectly well, yet his sense was so couched that if it had been delivered in the centre of his enemies no crimination with any force could have been framed out of it: and this way

he used as well with his intimate friends, as with strangers. This is an art worthy to be exercised by all people, and is useful in all times. For if men do not qualify their discourse when they have their wits about them, and thereby create a habit of caution, it will fall out that when disturbed with wine and passion, they will in all companies certainly let fly without guard, just as at other times they used to do, and so expose themselves to trouble or worse hazards. But his lordship, besides his caution in speaking, even in his political writings, though his reflections were of the actions and persons in his own time, his expressions were of such an universal nature that no matter or person in particular might own them. And what signified the ranting dialect some used but to indicate a false heart rather than a true one? And so his lordship found as may be touched afterwards.

221. Upon this account his lordship was very free from trepans, as being known to be sagacious and cautelous and not apt to give opportunities : for he entered not into promiscuous companies nor dealt in the bottle ; but had his friends often and his servants always about him. Once, after dinner, a servant told him a gentleman waited in the next room (which he used as a closet) to speak with him : and his lordship, as he passed by, saw a couple of fellows stand in the passage which made him think of evesdropping. And, being entered, the gentleman came up to him and, " My lord," said he, " my name is Claypole." His lordship instantly knew him to be (as he was) a descendant of the once Lord Claypole,¹ one of Cromwell's sons-in-law ; and then turned round upon his heel and, passing his two evesdroppers who were come nearer the door, went to his company and merrily told them what a vision he had seen. What his counterfeit lordship's business was, could neither be known or guessed at. But, in such cases, being alone with any person, that person is master and may swear his pleasure.

222. His lordship, at his chambers in Serjeant's Inn, was always obnoxious to promiscuous conversation ; for many

¹ John Claypole married Elizabeth Cromwell. The Protector made him one of his House of Peers in 1657. He died, unmolested to the last, in 1688.

would choose to visit him when they had him alone ; where commonly the design was to pump him : for he was looked upon to be less guarded than really he was, and that, from whatever he said, something might be gathered. All which he knew beforehand and framed his discourse accordingly. But his old acquaintance of the law, as Mr. Longueville, Mr. Johnson, and others, were as at home with him. His lordship retained such a veneration for the memory of his noble friend and patron, Sir Jeoffry Palmer, that all the old rendezvoursers with him were so with his lordship ; and all his life he used the same tradesmen, as barber, bookseller, shoemaker, saddler, &c., whom he employed so long as any of them lived ; and all the kindred of that name, of which there were not a few, were courted by his lordship. And his daughter, Mrs. de la Fountain, he revered : and in her family, though her husband was in good order and virtue (and who was not ?) inferior to her, his lordship was next to a domestic. But he never was so well, as when any of his family relations, whom he was continually obliging one way or other, were with him. And how he extended his benevolences to the remotest of his kindred will be shown in fit place.

223. His lordship, at his meals, had usually none but acquaintance, or relations, such as had a sort of title to be so free ; for he kept no public table, though a plentiful one. And, of these, some were in the confidence of the anti-court party. As, particularly, Mr. Paul Foley,¹ who became an acquaintance through a sort of relation, and improved it much by communicating his observations in the learning of records, to which he had applied himself very closely. He showed his lordship a book which he had compiled, which was designed to go beyond the ordinary collectors, such as Cotton, Prynne, &c. His lordship grew every day more and more fond of that knowledge, and was glad of such an acquaintance, whose discourse was incentive to his desires ; and, at that time, he had more leisure to attend to it, than when he was a practiser. But more

¹ He was second son of Thomas Foley of Witley Court, Worcester ; his uncle, Robert Foley, married Ann North, sister of the Lord Keeper. About Paul Foley see Burnet, *History of his own Time*, and Macaulay, *History*, ch. xx., vol. vii. p. 90, &c.

of this elsewhere. How this gentleman signalized himself, afterwards, is no secret. But I can remember, so early, that I heard him say in his lordship's house, that "things would never go well till forty heads flew for it." He had also very singular opinions; one was, that "all foreign trade was loss, and ruinous to the nation." But some proceedings about that time, touched upon in the Examen, interpreted that paradox: for the mortal evil of foreign trade was the great supply it brought to the crown, by which it could be supported, without being continually at the mercy of the parliament for supplies. When his lordship was named in the House of Commons, in order to be criminated, he was pleased to say in the house, "that he certainly knew that person to be of arbitrary principles, because he had heard him discourse to that purpose at his own table." This behaviour of that gentleman, when his lordship stood most in need of the service of his friends, doth sufficiently demonstrate the necessity of his lordship's constant caution in conversation with all sorts, friends and enemies. For the time was so nice that a word awry did a man's business, if he were unpopular; else, one would think I have too much exaggerated the cautious practice in all his lordship's converse. And yet, with ill people, even the utmost caution falls short, as was the very case with that gentleman. Mr. Tyrrell also used to come freely to his lordship.¹ I do not remember he then owned the design which he hath in part executed since of writing a History of England. But his discourse, falling on such subjects, was very agreeable to his lordship; though at that time he was looked upon as one of the anti-monarchists.

224. His lordship did not often dine from his own house; and, when he did, it was commonly at a particular virtuoso's, as with Sir Peter Lely, Mr. Hugh May, Sir Samuel Moreland, or the like.² Once, dining with Mr.

¹ James Tyrrell, a grandchild of Archbishop Ussher, his general *History of England*, 3 vols. folio, goes no farther than the end of the reign of Richard II.

² See an account of these persons, *infra*.

Hugh May in Scotland-yard,¹ Sir Henry Capel, who was of his lordship's relation and long acquaintance, made one. Among other discourse Sir Henry Capel was urged much to say why they, meaning the country party, urged a certain matter so violently in the House of Commons; and yet there was no tolerable reason in all the debate given for it. At last he answered "that they did not use to give the true reasons that swayed them in debates to the house." His lordship thought it a strange account. But I believe, if it was so then, it hath been much more so since; and, as strange as it may seem to be, it is commonly the parliament driving principle. As the times grew warmer his lordship endeavoured to be more retired, and less cared to dine where was any diversity of company. But once he was caught in a trap, and found himself in the headquarters of a dangerous cabal. It happened thus. Sir William Scroggs, a ranter, but (except in the affair of Oates) on the right side, was promoted to the chief justice's place in the King's Bench.² But when the court interest in parliament was wavering, and very like to fall, and my Lord Shaftesbury with his followers appeared to have an ascendant, and was actually taken into the privy council, his King's Bench lordship thought the interest not to be slighted; and accordingly he opened a social commerce with them, and made one at their circulary dinings; and the turn came to dine with him. He was so obliging as to invite his brother chief of the Common Pleas, who went not dreaming of his company, but expected that some noblemen of another order might be there. When the company was assembled it consisted of the Earl of Shaftesbury, the Bishop of London,³ the Lord Macclesfield, and others of the most distinguished opposers of the court. They caressed his lordship very much as a new comer whom they were glad of the honour to meet, and talked about a time to dine with him; all which, as they say, was "water in his shoes." But after dinner he got himself

¹ He was one of the surveyors of the king's buildings, and was the regulator of Windsor Castle.

² 31st May, 1678.

³ Dr. Henry Compton, Bishop of London, 1675-1714.

clear and was as careful not to be so complimented any more. And he was much displeased with his superior chief, for engaging him so untowardly.

225. This Sir William Scroggs was made lord chief justice of the King's Bench while his lordship sat in the Common Pleas. He was of a mean extract, having been a butcher's son, but wrought himself into business in the law, was made a serjeant and practised under his lordship. His person was large, visage comely, and speech witty and bold. He was a great voluptuary and companion of the high court rakes, as Ken, Guy, &c., whose merits, for aught I know, might prefer him. His debaucheries were egregious, and his life loose; which made the Lord Chief Justice Hales detest him. He kept himself very poor, and, when he was arrested by King's Bench process, Hales would not allow him the privilege of a serjeant; as is touched elsewhere. He had a true libertine principle. He was preferred for professing loyalty: but Oates coming forward with a swinging popularity, he (as chief justice) took in and ranted on that side most impetuously. It fell out that when the Earl of Shaftesbury had sat some short time in the council and seemed to rule the roast, yet Scroggs had some qualms in his politic conscience; and, coming from Windsor in the Lord Chief Justice North's coach, he took the opportunity, and desired his lordship to tell him seriously if my Lord Shaftesbury had really so great power with the king as he was thought to have. His lordship answered quick, "No, my lord, no more than your footman hath with you." Upon that, the other hung his head, and considering the matter, said nothing for a good while and then passed to other discourse. After that time, he turned as fierce against Oates and his plot as ever before he had ranted for it; and, thereby, gave so great offence to their evidenceships, the plot witnesses, that Oates and Bedloe accused him to the king and preferred formal articles of divers extravagancies and immoralities against him. The king appointed a hearing of the business in council, where Scroggs ran down his accusers with much severity and wit; and the evidences fell short; so that for want of proof the petition and articles were dismissed. But, for some jobs in the King's Bench, as discharging a

grand jury,¹ &c., he had the honour to be impeached in parliament, of which nothing advanced. At last he died in Essex Street of a polypus in the heart. During his preferment, he lived well and feathered his nest; for he purchased the manor of Burntwood in Essex. It was observed of him, that every day in his house was holyday. His lady was a very matronly good woman; she died long before him. He had one son who lived not many years after him; for he was a sufferer in the wars of amour. He had two daughters; one of whom was married to Sir Robert Wright, and lived to see his misfortunes; for at the Revolution he was clapped up in Newgate, and there died. The other daughter, sometime the widow of Mr. Kilbie a lawyer, married the truly noble Charles Hatton,² and may be yet living.

226. About this time, [A.D. 1676] Sir William Jones, being his majesty's attorney-general, there was such licentiousness of seditious and really treasonable discourse in coffee-houses, of which there were accounts daily brought to the king, that it was considered if coffee-houses might not be put down. Then it was scarce possible to cohibit people's talk; but, if the opportunities of promiscuous and numerous assemblies of idle spenders of time were removed, ill men would not be able to make such broad impressions on people's minds as they did. And the most likely way to do it was thought to be by a proclamation recalling all their licences, and prohibiting the granting any new

¹ The grand jury to whom the bill of indictment against the Duke of York for recusancy was presented by Lords Shaftesbury, Russel, and others. (See *Howell's State Trials*, vol. viii. p. 179. *Memoirs of James II.*, vol. i. p. 590.) For an account of the proceedings against Scroggs, both before the privy council and in parliament, see the *State Trials*, *ubi supra*; see also Roger North's account of him in the *Examen*, and *Burnet*, vol. vi. p. 1425. "I have read somewhere," says Swift, "of an Eastern king, who put a judge to death for an iniquitous sentence, and ordered his hide to be stuffed into a cushion, and placed on the tribunal for the son to sit on, who was preferred to his father's office. I fancy such a memorial might not have been unuseful to a son of Sir William Scroggs, and that both he and his successors would often wriggle in their seats as long as the cushion lasted." (*Drapier's Letters*, No. V.)

² The son of Lord Hatton. He is called by the author, in his *Life of Dr. John North*, "the incomparable Charles Hatton," vol. iii. p. 45.

ones; and, under this, divers points of law were started, whereupon the king commanded that all the judges should attend to give their advice touching the proclamation: and his lordship and five other judges, being all that were in town, attended. His lordship upon the main thought that retailing of coffee might be an innocent trade; but as it was used to nourish sedition, spread lies, scandalize great men and the like, it might also be a common nuisance. But I waive here the stating the several points, and the resolutions of the judges, and wherein they differed in opinion, because it is fully accounted for in the *Examen*. But I remember well that the faction was much incensed at this suppression of coffee-houses, without which it was impossible for them to carry on their trade. And, in particular, they said that Mr. Attorney should answer it in parliament; and although the leaders then were his good friends and he had reason to think jested with him, yet this same answering in parliament was a serious business with one who had a natural timidity which his reason could never conquer: and it occasioned him no slight railery from his party friends.¹

227. As to the business of lies and libels, which, in those

¹ A more detailed narrative of this transaction is given in the *Examen*, p. 138, where North, as usual, endeavours to defend the very arbitrary measure adopted by the court, to check the expression of public opinion at this period. See an account of this affair in *Kennett's History*, and in *Harris's Charles II.*, vol. ii. p. 263. The following description of one of these obnoxious receptacles of politicians is drawn from a lively paper in the *Harleian Miscellany*, vol. viii. p. 7, entitled "*The Character of a Coffee-house, with the Symptoms of a Town Wit*":—

"A coffee-house is a lay conventicle, good fellowship turned puritan, ill-husbandry in masquerade, whither people come after toping all day, to purchase, at the expense of their last penny, the repute of sober companions; a Rota-room, that, like Noah's ark, receives animals of every sort, from the precise diminutive band, to the hectoring cravat and cuffs in folio; a nursery for training up the smaller fry of virtuosi in confident tattling, or a cabal of kitling critics that have only learned to spit and mew; a mint of intelligence, that, to make each man his penny-worth, draws out into petty parcels what the merchant receives in bullion; he that comes often saves two-pence a week in Gazettes, and has his news and his coffee for the same charge, as at a three-penny ordinary, they give in broth to your chop of mutton," &c. In the same volume, p. 75, we have a vindication of the coffee-houses, "asserting from reason, experience, and good authors, the excellent use and physical virtues of that

days, were an intolerable vexation to the court, especially finding that the community of gentle and simple strangely ran in with them; it was moved that there should be more messengers of the press and spies, who should discover secret printing-houses (which then were against law), and take up the hawkers that sold libels, and all other persons that dispersed them, and inflict severe punishments on all that were found guilty. But his lordship was of a very different opinion, and said that this prosecution would make them but the more inquired after; and it was impossible to hinder the promulgation of libels: for the greediness of every one to get them, and the high price would make men of desperate fortunes venture any thing: and in such cases punishments never regulate the abuse; but it must be done, if at all, by methods undermining the encouragement: yet if any were caught he thought it was fit to make severe examples of them. But an extra-

liquor, with the grand conveniency of such civil places of resort and ingenious conversation."

It was not until the reign of Charles II. that coffee came into use in England. (See the *Life of Sir D. North*.) Under the year 1637, Evelyn, in his *Diary*, says, "There came in my time to the college, one Nathaniel Conopios, out of Greece. He was the first I ever saw drink coffee, which custom came not into England till thirty years after." (*Memoirs*, vol. i. p. 7.) It is said by Anderson, in his *History of Commerce*, vol. ii. p. 556, that, "in the year 1652, one Mr. Edwards, a Turkey merchant, brought home with him a Greek servant, who understood the roasting and making of coffee, till then unknown in England; and that this man was the first who sold cold coffee, and kept a house in London for that purpose;" so, when Dr. John North was a student at Cambridge (about 1662), "coffee was not of such common use as afterwards, and coffee-houses but young," vol. iii. p. 41.

It is observable that the coffee-houses became obnoxious to the court, at an earlier period than to which the text relates. Clarendon gives an account of a conversation which he had with the king in 1666, concerning "the licence which was assumed in the coffee-houses;" upon which occasion the Chancellor proposed either totally to suppress them, or "to employ some spies, who, being present in the conversation, might be ready to charge and accuse the persons who had talked with most licence in a subject that would bear a complaint." "The king," adds the noble historian, "liked both the expedients." (*Life of Lord Clarendon*, vol. iii. p. 678.)

Tea appears to have been introduced into common use about the same time as coffee. "I did send," says Pepys, "for a cup of *tee* (a China drink), of which I never had drunk before." Vol. i. p. 76, *sub anno* 1660.

ordinary inquisition to be set up and make so much noise and the punishment falling, as was most likely, not on the authors and abettors, but some poor wretches that sought to get a penny by selling them would, as he thought, rather incense than abate the abuse. His notion was that his majesty should order nothing extraordinary to make people imagine he was touched to the quick: but to set up counter writers that, as every libel came out, should take it to task and answer it. And so all the diurnal lies of the town also would be met with: "for," said he, "either we are in the wrong or in the right; if the former we must do as usurped powers, use force and crush all our enemies right or wrong. But there is no need of that for we are in the right; for who will pretend not to own his majesty's authority according to law? And nothing is done by his majesty and his ministers but what the law will warrant; and what should we be afraid of? Let them lie and accuse till they are weary, while we declare at the same time, as may be done with demonstration, that all they say is false and unjust; and the better sort of the people whom truth sways, when laid before them, will be with us." This counsel was followed, and some clever writers were employed, such as were called the *Observator* and *Heraclitus* for a constancy, and others with them occasionally; and then they soon wrote the libellers out of the pit and, during that king's life, the trade of libels which before had been in great request fell to nothing. And this was one of the visible good effects of the measures of the court and ministry at that time, which were, in all things, to act conformably to the established religion and the laws. I will not meddle here with the plots of Oates and Fitzharris, and all the other both sham and real in that king's reign, because they are fully set forth in the *Examen*; only, in order to introduce his lordship's opinion and reasonings upon them, I shall just walk over them in the following manner.

228. After the year 1666, the reign of king Charles II. was happy in being free from plots, I mean such as publicly appeared, until about September 1678, when that devilish imposture styled of Oates, came forth, and afterwards there followed the horrid conspiracy called the Rye

Plot, and, as fringes to these, other minor plots as will be found in the accounts given of them in the Examen. During this time his lordship sat in holy peace under his old oak the court of Common Pleas, which had nothing to do with criminals; and in the grand commission of oyer &c. at the Old Bailey, where the Oatesian storms were impetuous, the lord chief justice of the King's Bench steered the vessel, and the other judges had little or no share in the conduct, whereby his lordship in the main was rather an observer than an actor, in those proceedings to which hung the issues of life and death. He was not a little concerned to see men noised out of their lives, as the twelve priests were, and that nothing could resist the fury of the people that, like a hurricane, pursued them. And that which was most lamentable was that the king's attorney¹ should be possessed, and the chief justice² that presided, should be taken in the head, and even the parliament sounding loud and the populace little less than distracted; and all tending to blood of which no end was discerned; but it seemed that question and conviction were one and the same crisis. His lordship saw plainly that this popular insanity could not even by the strongest reasoning be moderated, but to do that must be a work of time: and as for open opposition by pamphlets, there was enough published by some Roman Catholics; but instead of making any impression, however cogent their reasons and arguments were, the attempts were cried out upon, as so many instances of a shameless impudence, pretending to prove false what the community were resolved should be true, and the party name (that is papist) held forth, was a sufficient confutation of them all. Nevertheless, his lordship was of opinion that a pamphlet might be contrived and wrote with such historical deductions and temper, that might in some measure, if not wholly, qualify this distemper of the public and that, what direct opposition could not, insinuation might effect.

229. Pursuant to this thought his lordship applied himself to prepare instructions for some expert pamphleteer, who had a popular style and address, to treat upon the

¹ Sir William Jones.

² Sir William Scroggs.

subject of Oates's plot; and after his way of extempore writing, which was familiar, and just as he used to speak, he drew up these instructions¹ which, so far as they go, might have passed for the pamphlet itself, but he stopped at the facts which were left to the writer to deduce as he saw occasion. He had no opinion of his own pen for such purposes as these, and it also required more time and thought than he could spare to work them up to a height sufficient to fall upon and crush a popular prejudice. I do not know that these instructions were ever delivered out to be made use of, but believe they were not, and that he kept them by him so long that, new scenes of affairs emerging, they were become less needful. After the discovery of the Rye conspiracy, his lordship's mind was so touched with the dismal effects of faction and sedition in the reign of King Charles II. that he fancied to compose their history which, in the same extemporaneous way, he deduced from the Restoration down to the conclusion of that discovery and gave his paper to a friend, desiring he would write it over with large margins, that he might adjoin such additions and alterations as he should think fit to make; which was done; and he made some, but very little, alteration, as putting out a name or the like that might give offence. (Part of these papers are in the Examen.) As to his lordship's personal acting and concern in the proceedings grounded on the many plots that appeared in his time; first, as to Oates, he had not the least hint or intimation of any such roguery as his was, before the information or narrative was sworn before Justice Godfrey, and then not early but as the matter became bruited abroad. He once heard Oates preach at St. Dunstan's, and much admired his theatrical behaviour in the pulpit: he prayed for his very good lord and patron the Duke of Norfolk, which made his lordship suspect him to be warping towards popery. And when his lordship came to know the particulars of his discovery, although the

¹ Sir John Dalrymple has given some extracts from a MS. of the Lord Keeper North, relative to the origin and history of the Popish Plot, which probably form part of the instructions here alluded to. They have also been inserted by Mr. Howell, in his edition of the *State Trials*. (See vol. vi. p. 1498.)

king's life, forsooth, was to be saved, he took the whole to be an imposture calculated to disturb the public and bring evils upon his majesty ; and after he had discoursed with the Earl of Danby, who at first appeared a fautor of it, his lordship found such desultory steps taken as could agree with nothing but a cheat and was confirmed in his opinion accordingly.

230. I mentioned his lordship's felicity in having, by his place, little to do with criminals ; he had but one of the many plot trials to manage, and that was of Nat. Reading,¹ who was not charged for treason but for subornation and tampering. He acted as counsel for one of the lords in the Tower, committed upon testimony of Oates and his colleague Bedloe ; and treated with Bedloe for a reward if he would soften his evidence against his client ; and Bedloe, by crafty advice, drew him into a snare so that there was clear evidence of subornation against him. Whatever the plot was, this was as foul a fact as could be, when a counsel at law shall tamper, and by bribes corrupt the king's evidence, in a case of high treason : and upon his trial he was convicted and punished with the pillory. In the rest of the trials, as they are printed, his lordship scarce spoke but chief Justice Scroggs led the van. I find in one of them his lordship took occasion to say, "As for the plot that is as clear as the sun : " which shining irony might have been spared. But the behaviour of all the judges, except the aforesaid chief, was passive ; that is, without interposing their opinions of the evidence and the credibility of their story ; which is often done by judges for assistance of the jurymen in common trials ; and many in latter times have thought that the same ought to have been done here. And nothing can qualify the silence but the inconceivable fury and rage of the community, gentle and simple, at that time, and the consequences of an open opposition to the chief, whose part it was to act, as he did, demanding no assistance of any of them ; which opposition might have been fatal in many respects : for the credit of

¹ See his trial. (*Howell's State Trials*, vol. vii. p. 259.) Reading had been secretary to Masaniello, during the insurrection at Naples. See a further account of Reading's Trial, (*Examen*, p. 240).

the witnesses must have been impeached, which the time would not bear; and it was not in their office to intermeddle; for as to the fact the jury is to answer. When it is so done by the co-assessors, it is for discretion and not duty; the most cogent reason was, that the prejudice was so universal and strong, that if an apostle had spoke against, no impression had taken place, nor had it done the prisoners any service; but on the other side, not only the rabble but even the parliament itself had flounced at it; which consideration turned the scales of the discretion, and made those judges rather let a vessel drive which they could not stop, and reserve themselves for fairer opportunities when such might happen for them to do some good, without pretending to remove mountains. Thus much I have thought to allege in favour of the judges' passiveness at those trials; whereof the full strength of reason can scarce be made appear so sufficiently as the proper time, in real circumstances, demonstrated.

231. That which, in all the course of these outrages most affected his lordship with admiration as well as commiseration, was the deplorable case of the Earl of Stafford, who was pronounced guilty, seemingly upon the grossest error in common justice that ever was known. Very few, if any, of the peers that condemned him would own that they believed the witnesses who swore the treason against him; and his lordship expostulated with some of them (that he could be free with) to know how it was possible, being so persuaded in their own minds, they could declare him guilty? Their answer was, that they were not free in the case but were bound to judge according to the proof of facts; and here the witnesses swore the facts, *ergo*, &c. His lordship replied that this was contrary to the very institution of trials; for it is the proper business of peers and juries to try not the grammatical construction of words, which every school-boy can tell, but the credibility of persons and things; which require a collation of circumstances and a right judgment thereupon; and God forbid that the worst of villains should have it in their power, by positive swearing, to take away any man's life or estate; and it is so far from that, that it is every day's direction of judges to jurors, viz. if you believe the wit-

nesses, find, else not. This error is reasonably to be supposed to have happened to many in sincerity, though some fancied a spice of the politic in the case, lest it might prove as happened when the not guilty lords were mobbed in Charles I.'s time. But here the case was so far otherwise that, of the two, the guilty side was in more danger of popular insults than the not guilty.

232. I might properly here enumerate and particularize the many false shams which, after the mighty Oatesian engine fallen, troubled the court, and also at large decipher the Rye conspiracy, because his lordship had the most to do in conducting the several examinations of the secretary's office and to see that what was done should be in due form, and according to law; but all those matters are so well described by his lordship, in his papers before touched, that a transcript would be the best account, which here would be superfluous, because it is already to be found in the *Examen*.¹ His lordship's greatest content lay in his majesty's presence, who almost constantly attended and was himself witness of the sincerity, diligence and prudence of his ministers; whereas accounts coming to him by the report of others would be defective, and, probably, not without some sinister misrepresentations. And on the other side the ministers, and particularly his lordship as he often declared, had the pleasure of observing his majesty's clemency, justice and inclination to mercy; which through the whole proceeding were egregious. He punished no man against whom the evidence did not charge the treason home (though in other respects they were guilty enough) in case they declared all they knew; nay, divers traitors that made ingenious confessions, were spared, though no great use was to be made of them; and the king said "he would not take away any man's life because he knew no more." Of these divers brought before the king, came on their knees holding up their hands, begging his mercy for their poor wives and children's sakes; which gave the king (always facetious) occasion to say, "he wished all his subjects had wives and children for whom they had most regard." And for the honour of his

¹ *Examen*, chap. v.

majesty and his ministers, I must observe that no man was kept long in prison without bail or trial, and none brought to trial without a convicting evidence, no rewards, nor tempting encouragements, leading questions, threats, or other undue means held forth to draw from them farther than plainly to declare all they knew. And, after all, that the effects of the chief criminals that suffered were not made a prey to courtiers, but, in divers instances, graciously restored to the wives and children of the sufferers. And if ever, in case of a conspiracy less execrable than this of the Rye, there is an instance of justice so legally pursued and, in the conclusion, so well tempered as here, I desire it may be brought forth and known, as this now is, to the intent it may never be forgot.

233. Among other guilty persons, some Scotchmen were discovered and taken ; and because their scene lay in Scotland, they could not be indicted and tried here; therefore it was thought fit to send them into their own country to be tried. But the time being nice, and the court desirous that no measures should be taken, which might be pretended not legal ; and it being the mode to cavil at every step, and raise moot points, like finding knots in bulrushes, as was done in this particular case, whether these men might be sent into Scotland or not : the king thereupon ordered his attorney-general to give his opinion in writing ; which was, that his majesty might send his Scotch subjects into Scotland, to be punished for offences committed there.

234. Before we part from this grand conspiracy, I must remember that it was thought fit, for the satisfaction of the people's minds, who were in a great amaze, and consequently doubt of the reality of this enorme plot, to publish a royal declaration of the very facts of it, and of all the material circumstances, punctually stated, and all out of the depositions of the witnesses ; to the veracity whereof it should not remain in any one's power to object ; and so as to leave no colour for any person to doubt the justice of his majesty's proceedings thereupon. This was prepared and composed mostly, if not wholly, by his lordship, which I will with more assurance profess, because I have heard his lordship often, in discourse, express most

of these singular notions and turns that are in it ; and the like may be found in his writings : as for instance—"that, after all endeavours by way of sedition failed, the rebels resorted to arms and assassination ;" with other as significant passages. The declaration itself is penned with that exquisiteness and caution, and all upon the steps of truth, made good by testimony, as may well be ascribed to one of his lordship's accomplished knowledge of the law, experience of affairs, and happy turns of thought and expression in business. And I might have inserted this in the very words, as part of his lordship's pen work ; but have declined so to do, because, at the time, it must needs have been laid before, and considered by the rest of the ministry, and by them, in some respects, altered or corrected, as they might think proper. After this declaration was published, and (as was commanded) read in churches, the people returned their joyful sense of the king's safety, after the great danger he had been in, by numerous addresses from all parts of the kingdom, which gave such a stun to the rebellious party, and their friends abroad, that little sign of any resurrection to action appeared in them, while that good king lived ; though it is presumed their trance was not so profound, but they lay watching for fresh opportunities, from alterations in the methods of the government, and the ministry, to be moving again, and at length they were gratified sufficiently, and due use thereof was made, by the changes that followed.

235. But his lordship did not think this declaration enough ; for, by many years' practice of lies and misconstructions of the public administration, the people's minds had been too much corrupted towards a prejudice against their government, and they were become inclined to believe all the evil that was lyingly affirmed of it : and this disease could not be cured on the sudden, but by time and application of due remedies to set them right. Therefore his lordship advised that not only all the depositions, as they were sworn, should be published in print, but also, considering such matters would not be pleasant or inviting to be read by the common people, that a well-penned relation of the whole conspiracy should introduce them ; which should be made as inviting to read, as the others apt to

convince, which must happen, being all along referred to them. The advice was approved, and Doctor Sprat, then Bishop of Rochester, a most polite English writer, was employed to do it; and, having all the depositions truly copied before him, he performed the task most completely, as the book itself sufficiently demonstrates. This had been a stately monument of honour to that reverend prelate, if he had not kicked down all the merit of it, by a pusillanimous behaviour; for, after the Revolution, when he feared being called to an account for acting in King James the Second's high commission court, he published in print two degenerate epistles of recantation to the Earl of Dorset: the latter most sneakingly apologizeth for his writing this book, in which I have not observed one sentence, which, even in that time, could justly be made criminal: he says it was unwillingly drawn from him; and he hopes he is not to answer for what he did not, as well as for what he did write; and that it was showed to the Lord Keeper North, who added some things, that had escaped him; whence we are to suppose, that all, which did not then please, must be attributed to the Lord Keeper, and not to him. A stately apologetic! But grant half of it had been added, or corrected by the Lord Keeper; who could better adjust such a relation, than he who was at the helm of all the examinations, and had both skill and will to do it according to truth? His episcopal lordship had done well to have shown, in his letter, what was so added, and then the saddle would have fallen on the right horse, or at least to have expressed wherein he was to have been a sufferer, if he had been called to answer for the whole as it was; but some men's timidity offuscates their understandings, though otherwise never so bright.

236. It would be an ungrateful thing to pass over in silence the greatest vindication of all these proceedings against the Rye plotters (in the direction of which his lordship had the greatest share) that ever happened to a government, and its ministry, since the world began. And that is (I say not of the plotters themselves, but leave that to sober reflection, but) of the adverse party, in full rage and power, and breathing all that revenge which formerly

they had menaced, and confirmed with numberless oaths, and execrations. If this be the case, it will not be thought I have here dealt in hyperbole. After the Revolution, when the assemblies of Lords and Commons met at Westminster, the matters, by way of inquisition retrospect, are reducible to two heads. One was concerning the proceedings in the city of London, in the choice of sheriffs, and the consequences; and the other was the trials and convictions of the culpables in the Rye conspiracy. The former was undertaken by the Commons, and the other by the Lords.¹ The Commons summoned Sir John Moor, that had been lord mayor, and Sir Dudley North, with Sir P. Rich, his partner, sheriffs, and all persons who had to do in the city, about the common hall. And these were examined touching their right, and the manner of their behaviour, and they answered plainly and candidly; and though tempted to accuse persons who were dead, as the Lord Keeper North, and Sir Leoline Jenkins, of somewhat they could have called crime, answered negatively, and, to their own charge, fully and went no farther; and finally, there being no fault found in them, they were all discharged and nothing more said to them. The other inquest concerning the Rye criminals, went deeper, and every one that was examined was sworn; for the Lords may administer an oath, but the Commons may not. The executions of the criminals (for brevity) were prejudged to have been illegally inflicted and so not inquired into, but the suffering persons were presupposed to have been murdered and the committee of Lords was appointed to inquire by what and whose means those persons came to be murdered, or to that effect, as the journals will show: and for this reason that committee was called the committee of murder; which must needs terrify those that were summoned to appear before it. In short, they summoned all the officers, witnesses, some counsel, and every particular person who had, as they were informed, said or done any thing relating to any of those trials; and, as I

¹ See the Report made to the House of Lords (from the *Lords' Journals*) *Howell's State Trials*, vol. ix. p. 951. See also the entertaining account of this inquiry in the *Life of Sir Dudley North*, and in the *Examen*, pp. 620, 621.

said, examined all upon oath, in order to find out some irregularity or corruption in what had been done about these matters. And after all the teasing, screwing, good words, and bad words, as some thought fit to use towards particular persons examined, there was not any one peccadillo discovered, nor any action or speech of any persons, in or out of authority, made known, which could be laid hold on as an abuse or misdemeanour that might be censured; and so the committee fell and no more news of murder. And this is that vindication of vindications I mentioned before; which, for the honour of his lordship, as well as the rest of the loyal party, I have extended more fully than otherwise needed to have been. And, for the close, I must needs observe that it was wonderful that in the ardour of those heated times (which may be imagined but hardly expressed) the ministers and agents should not only be so intelligent, but withal careful of the forms and substance of justice and their duty, that, on such a dire inquest as was not forethought ever to come over them, not one fault should be found, neither wilful nor out of human infirmity or oscitancy. O the virtue couched in Horace! *Integer vitæ scelerisque purus.*

237. But, to return; in the greatest difficulty that ever fell upon King Charles the Second from the parliament, and indeed the whole nation, which was corrupted with the air of Oates's plot, the king made a dangerous experiment; which was a reform of his privy council, dissolving the old one, and constituting one anew; which took in the Lord Shaftesbury as president, and the heads of the malcontent party of both houses; as may be seen in the *Examen*.¹ This struck the loyal party to an astonishment; but the king made use of his best friends, and, among others, took in the Lord Chief Justice North; which made him wonder to find himself in such company: but all turned right at last. Not long after this, his lordship

¹ "In 1679 he ventured upon a most dangerous experiment, which was the dissolving his privy council, and appointing a new one. And in that he took in the Earl of Shaftesbury in the place of lord president, and divers others of the prime leaders of faction. And because there were certain pairs amongst them, as two commoners, &c., folks said they went into the council as beasts went into the ark." (*Examen*, p. 75.)

was taken into the cabinet; where, as to all matters that related to the law and ordinary policy, upon the foot of the king's true interest, he had almost a judicial regard.

238. The Earl of Danby thought he could serve himself of this plot of Oates, and accordingly endeavoured at it; but it is plain that he had no command of the engine; and, instead of his sharing the popularity of nursing it, he found himself so intrigued that it was like a wolf by the ears; he could neither hold it nor let it go; and, for certain, it bit him at last: just as when a barbarous mastiff attacks a man, he cries poor cur! and is pulled down at last. So the earl's favour did but give strength to the creature to worry him. Herein he failed, 1. In joining to aid a design of which he did not know the bottom. 2. In thinking a lord treasurer that had enriched himself and his family, could ever be popular. And the plot went so far against him that he was within an ace of being accused of Godfrey's murder. But this was late. In the mean time, upon the producing of some letters of his to Mr. Montagu the ambassador in France, in the House of Commons, importing a treaty between the king of England and the king of France, for money to be paid upon the peace, he was impeached;¹ articles of high treason were brought up, and he was committed, and afterwards pardoned, the pardon pleaded, and the validity of it disputed by the Commons. It was first considered, if the earl should venture to plead the pardon or no, lest (in case the pardon were disallowed and his plea over-ruled) it would be peremptory, and he not be admitted to plead over, as *non cul*, or what other special matter he had to defend by.

239. But notwithstanding this hazard, that if the Lords had judged against the king's power to pardon after an impeachment lodged in the House of Peers he might not be allowed to have pleaded over, taking the pardon pleaded, as is usually held, to be a confession of the fact: yet he did plead his pardon to the impeachment and relied

¹ See the proceedings in *Cobbett's Parliamentary History*, vol. iv. p. 1060. Much light is thrown upon these complicated intrigues, by the Letters of Barillon, the French ambassador, published by Sir John Dalrymple, in the Appendix to his *Memoirs*.

upon it. And so it stood, at the dissolution of the Westminster parliament, ready to be argued and debated in the Oxford parliament. And, if the expedite dissolution had not prevented, it might have made much ado between the Lords and Commons; for it was not probable that the Lords, by enervating the king's pardon, would have left themselves liable to be impeached and out of the power of the king's mercy. But the faction, in all discourse and writing, asserted the non-validity of the pardon with all the earnestness that could be; and, at the same time, the men of law stared at such a pretence as an unheard-of innovation, accounting the offence in the impeachment to be the same as in other courts that have cognizance of it; that is, treason against the king; which, as all felonies and misdemeanours are, is punishable at the king's suit and may be released by him; the impeachment being but as an indictment in the high court of parliament, which is the king's suit.¹

240. There is a certain heathen English philosopher that says, "when reason is against men, men will be against reason;" which notable worldly saying never shined brighter in any instance than in this; for it is hard to pick out of the whole law a maxim more sure than "that the king can pardon all high treasons" universally. And yet, when passion was at work and resolution taken to urge the Lord Danby to the death (for what reasons; whether to press some secrets out of him, or otherwise, touching the desperate dependencies of the time, I attempt not to say here), it is no wonder that arguments, such as they were, grew up like mushrooms. His lordship used to observe the method, when points were previously resolved upon which could not be maintained directly; as here, "that the king cannot pardon." First, say they to themselves, is there any case of offences by law that the king cannot pardon? yes; private rights, as appeals, and common nuisances. Say you so? then this impeachment

¹ This question was finally settled by the statute 12 & 13 Will. III. c. 2, by which it is enacted, that a pardon shall not be *pleadable in bar* to an impeachment; but this act does not prevent the king from pardoning after the impeachment is determined.

is for a right of the people and is their private suit by their representatives the Commons ; and, rather than fail, call the offence a nuisance. And, turning the tables, see how with positive naming and asserting, if people importunately give way to it and quit the plain text of the law, any thing may be stood upon. It may be proved that the king can pardon bonds and mortgages. For ask, first, what can the king pardon ? answer, outlawries, and trespasses *vi et armis*. Then, because a man may be outlawed in debt, call the bond an outlawry ; and, because a man may enter by virtue of his mortgage, call it a trespass with force. It will be said that these points are too impudently urged : I grant it. And what is to be said of the other ; for, in kind, they are the same ? his lordship was always of opinion that all false reasonings, in matters of life and property, were of dangerous consequence ; and that men are not aware of the mischiefs to the public, when, from high places, times serve themselves of them. For which reason his ordinary sentence on such occasions was, *nova, non vetus, orbita fallit*.

241. I do not meddle here with the history of the case of the Earl of Danby at large. It may be found in the Examen, and, for fail, in his own memoirs. But I cannot omit one passage, touching only his lordship's concern respecting the parliament : and that is the point of his being bailed ; wherein his lordship differed from some of his brethren. The question turned upon the authority of parliament. He stood committed by the Lords, upon his impeachment when the Westminster parliament was dissolved ; and, at the same time, the untried lords, committed for Oates's plot, lay there on the like account. And now both the earl and the Popish lords thought that, by joint influence they might get to be bailed. Accordingly, upon the return of an Habeas Corpus, his lordship the Earl of Danby was brought up and appeared in the King's Bench court.¹ The case made a great noise, and raised a great expectation what would be the issue. His lordship, being consulted (though not of that court) answered that he was of opinion that the Court of King's Bench, being

¹ See the report of the proceedings, in *Shower's Rep.* vol. ii. p. 335.

inferior in jurisdiction to the House of Lords, could not bail their prisoner after he had been charged by special articles: for they had no means to bring down the record whereby to determine any thing of the cause of his commitment; and, for aught that they could judicially know, he might be attainted of the treason. It is certain that the Lord Jeffries, then chief justice, in court refused it; and yet he was a great stirrer up of the point, in order to gain the other judges to countenance his (then declared) opinion for the bailing; which was taken ill, as may be touched elsewhere. So the lords were not bailed at that time. But, in the reign of King James II. they were set free; and (with the peace of all forms) I think very justly; for it is a prodigious injustice to hold men in prison perdue without any trial or recourse for liberty: and, if the giving it was irregular, it was erring for justice; and one would think that such consideration might purge the irregularity. But nothing hath ever been said against it in public yet; and, so far all is well. His lordship had a revelation in his mind, that this bailing of Danby was a thorn pushed towards him; though nothing came of it.

242. While the case of the Earl of Danby depended in parliament, there was a factious pamphlet published which aimed to prove the judicature of the Lords almost sovereign; and that all courts, ecclesiastical as well as temporal, were subject to it and appealable; that the house was the *magnum concilium*, or great council, in the sense of ancient records; that, in trials for treason, the Peers were judges of the court; and that there was no other court but the house itself; and that there was no need, nay, it was an usurpation, to have a lord steward. For the Commons demanded of the House of Lords that they should pass sentence upon the earl's plea of his pardon; and the Lords addressed the king to appoint a high steward, in order to the trial of these impeachments; and so it was wrangled off and on till the session ended. But his lordship, provoked by this pamphlet, but more to see people mistake the laws and strike so hard at foundations, composed an answer to that pamphlet,¹ showing that a lord

¹ An imperfect copy of a MS. tract is preserved amongst the Har-

steward and his court, as well in parliament as out of it, are necessary to the trial of a peer; and that the lords take the place of parity, pursuant to Magna Charta. But the law and the sentence are of the court and not of the peers; and farther, that the *magnum concilium in parlamento*, or the great council in parliament, was, anciently, not the peerage but all the officers of state, and such as the king should call to serve in that capacity, and that the *placita in parlamento*, or pleas in parliament, came before the great council juridically and not before the peers. But, of late years, that jurisdiction, which is the king's, is executed by the peerage; and the council remains only in the capacity of assistants: and so it is like to continue.

243. It may be expected here that an account should be given how and in what manner, as well as to what purpose, his lordship was concerned in that great affair, promoted and known by the term Exclusion. It was a bill promoted by the Commons in the little and latter Westminster parliaments, to exclude the Duke of York by name from succeeding to the crown of England. The steps and conduct of it, and what disappointments it had, history must show. I know only so much, viz. that his lordship looked upon it not to attack the succession more than the present monarch. For, if such a foundation were once laid, whatever importunity prevailed to gain it, there would be the same, with very large increase, to obtain all the power of the government out of the king's hands, upon pretence to fortify the exclusion;—for it would be said, it is true, there is a law; but what is that without power? mere paper. And, then, the militia and all the civil commissions must fall, as a sacrifice to the exclusion, into the hands of the king's enemies.

244. About this time, in the House of Commons, it was made a question whether they had a right to impeach commoners in the House of Peers, capitally, or not? Against that power it was alleged that, if commoners are condemned by the Lords, they lose their challenges; and

grave MSS. (*Catalogue No. 299*) which is supposed by Mr. Hargrave, to be the answer here alluded to. (See the *Preface to Lord Hales' Jurisdiction of the Lords*, p. 177.)

their humble estate is not so sensible to those great men, as it would be to their equals. Therefore it was provided by Magna Charta—*Quod super nullum ibimus nisi per judicium parium, aut per legem terræ*. Which sentence couched two sorts of trials; one of the fact the other of the law. The latter cannot be *per pares*, but by the court who judge upon the fact *per legem terræ*; and the fact, which to try is the work of the Peers, may be confessed expressly, or by a pardon pleaded or a demurrer. Therefore the *lex terræ* was put in to answer those cases, whereof the fact was stated by trial and confession; and the judgment of the fact, guilty or not, and of the law, whether judgment of death or not, are two things answered, 1. By *pares*, and, 2. *Legem terræ*. Sir William Jones, who took the conduct of this whole affair in the house upon himself, and was the chief dictator of the terrible votes against the Lords, upon that Monday on which the parliament was dissolved, entered upon his solemn argument, to show that the Commons had a right to bring a commoner to trial for his life by an impeachment in the House of Peers, and insisted that it was consistent with Magna Charta; for although the peers' sentence is not *per pares* yet it is *per legem terræ*. And, as that word was out of his mouth, the black rod knocked. This matter came not to the judges to give any opinion; and, if it had, they had a declinatory of course, viz. "that matters of parliament were too high for them." But, nevertheless, his lordship considered all points, and particularly what were moved in this case.

245. In the time when the public was intrigued, and indeed tired with the blundering proceedings of Oates and his plot, his lordship had the great consolation of the arrival of his brother, Mr. Dudley North, who, having resided at Smyrna and Constantinople, above twenty years, as factor and merchant in the way of the Tukey trade, and had got a fair estate, returned to England to enjoy it. I shall not characterize this gentleman, nor enlarge much concerning his great dealings abroad and at home, having referred all those matters to the account of his life. But the most remarkable observation of this mercantile spark was, that he came with such an idolatrous respect for Oates and his plot, as if he had been truly, what Oates blasphemously

arrogated to himself, the saviour of the nation. This was instilled into him by the merchants of the Turkey Company in England; who, being generally factious, in the flame of the plot, had sent accounts abroad which created such enorm imaginations in the factors. But when, by a long converse with his lordship, (for a little time would not do) the mystery of iniquity was unveiled, and the merchant saw that his idol was such a heap of nastiness, he wondered sufficiently at the stupidity, or knavery of his correspondents here. There was little or no intercourse, by letters, between his lorship and him in Turkey, for divers years before he arrived. Both had so much business, of other kinds, that they had left off writing long letters to each other, as formerly they had done. However, it had not been safe to have committed to a written despatch, such freedoms about the plot, as was needful to do right to it; nor was it thought material, at that distance, to transmit such nice and amusing intelligences. But the factious party made it religion to propagate the faith of the plot, all the world over, as far as they could carry it by their correspondences. All which was agreeable to proceedings here; for the impudence, as well as shame, of so great a falsity, was screened by public authority and violence; under the cover of which, the belief of it was obtruded, and all open contradiction suppressed. And, from this instance, let it be observed that, "where force and violence usurps the office of sound testimony, and deprives men of the liberty of judging, falsity and wickedness lies at the bottom."

246. These brothers lived in this manner with extreme satisfaction in each other's society; for both had the skill and knowledge of the world, as to all affairs relating to their several professions, in perfection; and each was an Indies to the other, producing always the richest novelties, of which the best understandings are greedy. And it must be thought, trade and traffic in the world at large, as well as in particular countries, and more especially relating to England, was often the subject. And Mr. Dudley North, besides what must be gathered from the practice of his life, had a speculative, extended idea; and withal, a faculty of expressing himself, however without

show of art, or formality of words, so clear and convincingly, and all in a style of ordinary conversation, witty and free, that his lordship became almost intoxicated with his discourses. And these new notions did so possess his thoughts, and continually assume shapes and forms in his mind, that he could not be easy till he had laid them aside, as it were, upon paper, to which he might recur, when occasion was, to reconsider, or apply them. And if, at the council-table, trials of issues, or, by probable relation, any thing touching the public, occurred (which he would not lose, and yet not have the burthen of it lie a charge upon his memory) if not upon the spot, yet, when he came to his closet, he disposed it.

247. But here, having mentioned some new lights struck about trade, more than were common, it may be thought a jejune discourse, if I should pass on without giving some specimens of them: therefore I add a note, or two, that I could not but observe.¹ One is, that trade is not distributed, as government, by nations and kingdoms; but is one throughout the whole world, as the main sea, which cannot be emptied, or replenished, in one part, but the whole, more or less, will be affected. So when a nation thinks, by rescinding the trade of any other country, which was the case of our prohibiting all commerce with France, they do not lop off that country, but so much of their trade of the whole world as what that which was prohibited bore in proportion with all the rest; and so it recoiled a dead loss of so much general trade upon them. And as to the pretending a loss by any commerce, the merchant chooses in some respects to lose if by that he acquires an accommodation of a profitable trade in other respects. As when they send silk home from Turkey, by which they gain a great deal, because they have no other commodity wherewith to make returns. So, without trade into France, whereby the English may have effects in that kingdom, they could not so well drive the Italian, Spanish, and Holland trades, for want of remittances and returns that way.

248. Another curiosity was concerning money; that no nation could want money; and they would not abound in

¹ See some further account of Sir Dudley North's opinions in his *Life, post.*

it: which is meant of specie for the use of ordinary commerce and commutation by bargains. For if a people want money they will give a price for it; and then merchants, for gain, bring it and lay it down before them. And it is so where money is not coined; as in Turkey, where the government coins only pence or halfpence, which they call parraws, for the use of the poor in their markets: And yet vast sums are paid and received in trade, and dispensed by the government; but all in foreign money, as dollars, chequeens, pieces of eight and the like, which foreigners bring to them for profit. And, on the other side, money will not superabound; for who is it that hath great sums and doth not thrust it from them into trade, usury, purchases or cashiers, where the melting-pot carries it off, if no use to better profit can be made of it. People may indeed be poor and want money, because they have not wherewithal to pay for it; which is not want of money, but want of wealth or money's worth; for where the one is the other will be supplied to content. Mr. Dudley North was surprised with the Lombard Street cash trade, and would not come into it a great while and then not much. He was at great defiance with the clipped money, and made war upon it in all his public and private discourses; and laid the foundation of the reform that was afterwards made: though his project was spoiled by those that (without thanks to his memory) took it up and put it in execution. As will be related more at large in the said gentleman's life.

249. Not long after Sir Dudley North's arrival he was called upon to serve the king in the office of sheriff of London and Middlesex, in order to rescue that city out of the wretched state it was brought into by a certain monster, that raged in the years 1680-81-82, styled Ignoramus. Of which I shall give no farther account here, nor of the disputes about choosing sheriffs of London, because the whole proceeding is fully accounted for in the *Examen*.¹ I shall therefore insist more particularly upon some few passages only, which may tend to display his lordship's zeal and

¹ *Examen*, p. 113, *et seq.* By the "Monster Ignoramus," North alludes to the return of *Ignoramus* to bills for high treason presented against Lord Shaftesbury.

sincerity in serving his country and his master and are not expressly mentioned in the Examen.

250. When it was intimated at court that Mr. Dudley North was every way qualified for the office of a sheriff if he might, by means of his lordship, be prevailed upon to hold; the king very much approved of the person but was very dubious whether his lordship, with his much caution and wisdom, would advise his brother to stand in a litigious post. His majesty knew, that, unless his lordship cordially undertook it, he might appear to him heartily to consent and yet, like a tricking courtier, under-hand insinuate to the merchant not to stand and openly charge it on his brother's refusal; which would have colour enough. But yet he resolved to try: and, one day, he spoke to his chief justice, with a world of tenderness and desired to know "if it would be too much to ask of his brother, Mr. Dudley North, to hold sheriff upon my lord mayor's drinking."¹ His lordship answered that he was assured his brother was disposed to serve his majesty to the utmost of his capacity. But, as to this matter, he begged his majesty's leave to acquaint him with his pleasure and then he would return to his majesty his brother's answer. So far this went well enough; and the king conceived great hopes that he had found his man.

251. Now came on the main pinch of the business; which was to make Sir Dudley North sensible of his interest in complying with the king. His lordship was clear of opinion that his brother should hold; for he knew well that nothing at all against law or extraordinary would be required of the sheriffs; and as for matters of the law, they would be re-committed to the secondaries and under-sheriff; and then, nothing rested on the sheriff but to hold his white staff and make feasts. And for matter of title, he thought there was more squeak than wool; for whatever people thought was at the bottom, if a citizen be called upon an office by the government of the city, and obeys, where is the crime of that? but he knew also that my lord mayor was in the right, and that his proceeding would be justified.

¹ See the interesting passage on all this business in *Memoirs of Thomas Papillon, of London, Merchant (1623-1702)*, p. 207. (Reading, 1887. 8vo.)

But then such a terrible fear was artificially raised up in the city as if this service was the greatest hazard in the world ; at least that a powerful band of faction was col-leagued, right or wrong, to resent it, which would bring certainly trouble and, probably, loss ; and justice has seldom so much credit in England as to be relied on. All which, besides the fastidious forms and expense of the year, had caused so many knowing and able citizens to decline the office and made it not to be expected that his brother should be free from all those qualms ; especially being so much a stranger as he was, to English affairs which tended to increase his diffidence of himself and distrust of the matter. But his lordship knew withal that his understanding was such that, having full information of the state and circumstances of the business and of all possible consequences, he would certainly determine according to the true reason of the case, whether to hold or not. And, with this confidence, his lordship, with all the freedom of a bosom friend, entered into conversation with him. He put on no authority and required no trust implicit to be reposed in him ; nor did he advance the least show that he expected his compliance herein as any act of friendship towards him or as if he made his own court at his brother's risk ; but laid before him an opportunity that proffered itself, whereby he might make a fortune if he wanted it and much enlarge what he had, besides great reputation to be gained, which would make him all the days of his life very considerable. He left the objecting part to himself and took his rise accordingly to dissolve all the fallacious reasonings, that commonly passed in discourse, of the dependence.

252. He laid open the case of the lord mayor's right very clear and plain, against which, in common sense, there was no reply ; for the noise made by faction against it was brutal and raised up to serve the present turn only, and would vanish when that was past : besides there was all the valuable part of the city for it. But the merchant did not much heed that, because he was satisfied that a private citizen was no judge ; and what had he to do but according to his oath of freedom to obey ? And, as for fining off, it was in reality as much a fault as serving. So

that, if the magistrates called and enjoined him, he did not see how with honour he could come off one way or other; and, if it was a matter of great moment, he was as ready to hold as to fine off. But the point was what it would signify him to bear a tedious formality and spend two or three thousand pounds to purchase it. As to that; his lordship showed him that, if he served, the obligation was so transcendent in this conjuncture, even in his majesty's own sentiment of it, that there could be no employment, by commission from the crown, which would not fall to his share; for the court was a little like the city in that. They thought the service much greater than really it was. So terrible an apprehension had they of the fierceness of this faction and the advantage they had over the court at that time. Every man that intends for employments must serve in some sort or other to show himself capable; and what opportunity could he expect should drop from heaven more propitious to his advancement than this? He could never expect another; nay, the refusing of this when so fairly offered was a positive demerit which would disable any other pretension as might fall in his way. This office would fall to his share early or late; and if it be with so fair a prospect, why not at any time? now as well as hereafter? and, as for the charges, his lordship said, "Here, brother, take £1000 to help make good your account; and if you never have opportunity, by pensions or employments, to reimburse you and me, I will lose my share: else I shall be content to receive this thousand pounds out of one half of your pensions when they come in; and, otherwise, not at all." A day or two's conversation of this kind, wherein more was considered than I can represent, entirely reconciled the merchant to his office; and having taken a resolution upon clear reason, he set his mind at rest and thought no more of the adventure or consequence than he did in shipping a bale of cloth. And, afterwards, like a great vessel against the waves, he stemmed the rage of the town-talk that flew in his face wherever he came; as is already related in the *Examen*,¹ and will be more particularly expressed in the course of that gentleman's life.

¹ *Examen*, p. 601, *et seq.*

253. His lordship was one of those persons whom the king appointed to be in the city not far from Guildhall, when the sheriffs were to be chosen; and he stayed during the election at Sir George Jeffries' house; and Sir George himself, through his interest in the city, had no small share in the conduct of this affair. This was to the end that, if any incident required immediate advice or if the spirits of the lord mayor should droop, which in outward appearance were but faint, there might be a ready recourse. So the factious side had the Lord Grey of Werke, and the whole Green-ribbon Council¹ (elsewhere characterized) and other sages of the party all equally concerned in what was doing.

254. When parties of men are concerned against each other in civil broils, it is strange how fertile all things will be of moot points. After the old sheriffs had taken upon them to declare Papillon and Dubois duly chosen, many of the reasonable citizens thought my lord mayor's point in a worse state than before; for here was a new case started. "Here," said they, "are two sheriffs declared: so they are officers *de facto*; and how can you super-elect and set up anti-sheriffs to oust them before their title is tried?" Upon this difficult matter, the court adjourned again; and, in the interim, the lord mayor and aldermen were sent for, or went, to attend the king in council; and there they were told that the proceedings of the sheriffs at the common hall, after the adjournment, were not only utterly void and null, but the persons were guilty of an audacious riot and contempt of lawful authority; for which, by due course of law, they would be severely punished. But in the mean time it was his lordship's (the lord mayor's) duty, and his majesty's pleasure, that they should go back to the city, and summon the common hall, and make election of sheriffs, for the year ensuing, according to the ancient usages of the city; and this (by his majesty's order in council) they should have with them. The lord mayor had found a different sentiment of his case upon this alteration; and some had

¹ For an account of the Green-ribbon Club, see the *Examen*, p. 572. On Forde, Lord Grey of Werke, created by William III. Earl of Tankerville, see Macaulay's *History*, especially vol. viii. p. 237.

insinuated that these courtiers would thrust him forward, and be under no engagement themselves. So he was very full of doubts; and, while the Lord Chief Justice North was speaking to the matter, as he did with great clearness, and plain reasons given, was very attentive; for he had a great value and esteem of his lordship's knowledge and integrity. When his lordship had done, he crept down towards the end of the table where his lordship sat, and, with a summiss voice and aspect, "My lord," said he, "will your lordship be pleased to give me this under your hand?" Now the king, and all the board, eyed the man, to see what he went about, and, hearing what he said, they all thought he had put the dor, as they say, upon the chief justice, and expected some turn of his wit to fetch himself off; and divers thought to have some sport in seeing how woodenly he would excuse himself. But his lordship, showing an uncommon firmness of mind, cheated them all; for he answered, without any hesitation, "Yes, and he should have it presently:" so his lordship took the pen and paper, that lay before him, and wrote to this effect, viz. "I am of opinion that it is in the lord mayor's power to call, adjourn, and dissolve the common hall at his pleasure; and that all acts done there, as of the common hall, during such adjournment, are mere nullities, and have no legal effect:" and to that set his name, and gave it him, all of his own hand-writing; and, after he had it, he came up to his place again. This passage pleased the king; for he was not used to such generous dealing in touchy matters among his counsellors.

255. I have here touched upon some passages only which might tend to demonstrate his lordship's sincerity and resolution in a clear cause, and wherein he was satisfied that the law was with him, because the whole proceeding is fully related in the Examen. It was of the last consequence to the crown at that time; for the question was, whether treason and sedition, in London and Middlesex, were criminal, or not. And this in a time when it was believed, though not so soon evidentially discovered, that a rebellion was ready to break out, and the game was actually begun in Scotland but happily quelled at Bothwell Bridge [22nd June, 1679]. Was it not a strange circum-

stance in such a conjuncture, that the traitors themselves should be the ministers of justice, to judge and condemn their fellows; against whom discoveries were already had; though the whole scheme was not yet brought forth as afterwards happened by the means of one Keiling?¹ Neither do I give here the chicaneries of law upon this point, because they may be found, as far as was thought necessary, in the Examen. And indeed they may not be thought worth remembering; and, as for themselves, I grant it; but, as they are the history of some men's impudence, they are not inconsiderable; for they show that men, in parties, will affirm any thing (however nonsensical it is) against each other; and, what is worse, when things are thus confidently affirmed by numbers, the people, and of them such as should know better, will think there is some reason in it. But of all sorts, none so brassed in this kind as demure pretenders who complain of popery and arbitrary power, and of all men are the most irreligious and unjust themselves. And such this faction was. His lordship was a sort of pilot in the conduct of this affair; and most of the acts turned upon his judgment and authority. There were others who blustered and made a great noise; but none penetrated to the bottom of the matters in question, but himself. His lordship was so much concerned that a matter of this nature and consequence should be tossed upon men's tongues as it was, and scarcely any one either mentioned or indeed knew the true distinction upon which it was turned, that, for setting people's thinking right, he drew up instructions for some of the employed writers, whereby to dress out a pamphlet which he supposed would be done, author-like, by casting the materials into some plausible form, and setting them off with quaint sentences as might invite people to read, who care not for a lawyer's notes of argument, as in a law case. But whosoever it was that undertook it, he published the notes *verbatim*; adding only a sort of prologue and an epilogue; which made his lordship very angry: and, from that time he resolved to give out no more instructions, and not to undertake any thing he could not finish himself.

¹ The man who discovered the Rye House Plot.

256. It is related in the *Examen*,¹ how busy the last Westminster parliament was about the Exclusion; and also how money matters stuck though an actual war with France was loudly called for; and treaties abroad touching peace, between the French and the confederates, viz. Spain, Germany, and the Dutch (whereof the king was mediator) were depending; so that the king had reason to make a long recess of that parliament, to the end that matters might digest and come to some maturity, as was hoped and intended to be laid before the House of Commons in order to put them, if possible, into a better humour. But the faction at that time thought that future elections would prove, as at the present, propitious to their hopes; and therefore, partly to make bad blood, and partly to force the king to let the parliament meet and sit, which by divers prorogations had been put off and might be so again, they instituted a method of petitioning the king that the parliament might meet and sit. And it is scarce credible with what saucy impudence divers came to the king with petitions signed with numberless hands and frightful hieroglyphics; but with ten persons only in company, so as not to offend against the statute about tumultuous petitions: all which was fully stopped by a proclamation which his lordship penned. This also, with the turns it had in the House of Commons, is inserted there; so shall pass it over, and insist only upon some few incidents with regard to his lordship, which have not been so particularly set down there.

257. While the persecution of abhorrrers, and questioning the proclamation in the next sessions of parliament, were talked of by the factious party in town and terrible doings were expected, his lordship was passive and appeared not to have any concern upon his spirits; but consulted his best friends, and showing them the proclamation, asked if they could find any caption to be made upon it; and every one, even old parliament men, used to the trade, could find none. But his lordship nevertheless held himself under the guard of his caution, lest, when the enemy had none, he might administer weapons against himself; for he did expect

¹ *Examen*, p. 541, *et seq.*

as it proved that he should be surrounded with trepans. One was a grand one and of a secretary of state, the Lord Sunderland.¹ He and the rest of his party at court, pretending to be fierce against the petitioners, thought to push on such as they would ruin to act intemperately in that cause, and so to become exposed to the parliament: and pursuant to this pious design, when he signified his majesty's pleasure to his lordship and Judge Jones, to suspend the execution of the laws against Protestant dissenters, he added that they should by all means discourage the petitioners, and encourage the anti-petitioners. But his lordship was aware of his trap, and in the country took thereof no manner of notice. Afterwards when the proclamation was voted a ground for an impeachment and made a great noise (but the committee, to draw articles, could make no work of it) his lordship's brother-in-law Mr Soams,¹ in extreme haste found out his lordship and told him he came from the Earl of S. (I believe, Sunderland;) for he (Mr. Soams) having often urged that lord to find some means to abate this rigour of the Commons against his lordship, that morning the earl wished him immediately to find his lordship out and to let him know "that a way was discovered for him to come off." And it was that he should go immediately (time would not stay) and, speaking to the Commons, "give up the proclamation as unlawful." That was a point they would certainly carry; it being against the right of petitioning and privilege of parliament: and they had no enmity to his lordship but regarded the matter; which set right they would drop persons; but, if resisted, they would pursue through all with the rigour of impeachments: and this must be quick, quick; for, if they farther engaged themselves it would be too late. His lordship could hold out no longer but laughed in his friend's face. The gentleman thought him mad. "Why, brother," said his lordship, "do you not see through this tinsel device?" and then he unfolded to him the snare; which was, in short, that, if he went and sneaked in that manner he should lose every friend he had in the house; and all would unanimously

¹ William Soame (*sic*), of Little Hurlow, co. Suffolk. He was created a Baronet in 1685. He married the Lady Beata Pope, elder sister of the Lord Keeper's wife—see § 114.

join to crush him : and that he should do so was the design of this message. Somewhat like this happened in the House of Lords, where the Lord Lovelace, after much said of his relation, honour and respect, asked his lordship why he did not go and speak to the Commons? "for," said he, "they are very angry with you." "Are they indeed so angry as your lordship says?" "Ay, by G—d are they, very angry!" His lordship answered that "he did not care to come near angry people."¹ So ended that dialogue. But these lords, not used to much contradiction, thought all men fools but themselves: for if they had had any judgment they must have known his lordship better, and not have ventured such flams at him, who could smell powder farther than they could see. But where is the sense of truth, to say nothing of honour, in the acts of such false friendship?

258. His lordship said often that this question, raised upon him in the House of Commons, was much easier in the defence than the former about solicitation; for then he had a majority of the house fully assembled, his friends, at least, not averse or in party against him; so that the war was carried on by tricks and surprises and needed watching and informing. And this puts me in mind of a merry conceit of his lordship's aunt, the Lady Dacres.² She was acquainted with Mrs. Baker, the old Lord Anglesey's sister, who was a zealous Presbyterian and pretended to have a vast interest in that party. She told the Lady Dacres that she could fetch off her nephew (then upon the tenters) when she pleased, by making all the Presbyterians in the house for him. Upon this the Lady Dacres sent for her nephew to come to her, as he did, and told him what Mrs. Baker could do for him. His lordship answered that he should be thankful for any acts of friendship in that kind. "But i' faith, nephew," said she, "there must be money." To which his lordship replied "that he would not give one

¹ In the *Examen*, p. 548, North has described in a lively manner the anger of the petitioners. "I remember well in Trinity term, as the weather was hot, the party men flamed. We could observe, as they passed to and fro, fury in their countenances; and we could not avoid hearing the stately sounds of, 'God d—n all these abhorrrers! Plague take all these abhorrrers!' and the like."

² See Preface, § 3.

brass farthing to buy all the Presbyterians in England ;” and so ended that scheme. But to return to the case of the proclamation. Elections had been so varied that he could not pretend to have half the members indifferent to him. The rest were all in the confederacy against him ; and it was to no purpose, or, rather to ill purpose, to apply to any of them. Those who were his friends (by that I mean the court party) were sure to be for him, and the rest as sure against him in every question that should be put to injure him. And some of the old stagers of his party told him plainly he might take his ease and sit still ; for his friends out of the house, by soliciting, could do him no service. The matter was very well understood ; and they within that stood together would be vigilant as to surprises, and act for his indemnity as occasion would serve.

259. I cannot omit here the doing right to his lordship’s memory, in showing a piece of humanity that few persons but his lordship, in his circumstances, would have done. And that respected Sir Creswell Levinz, the attorney-general, who named his lordship in the House of Commons.¹ For although his lordship knew that the party intended to work through him, yet he never conferred with or so much as spoke to him concerning his behaviour, when he should be called to answer in the House of Commons : for nothing could be advised in his case but to act the brave, and to own and justify his proclamation to contain nothing against law, or to have refused to name his assistants when the act was his own ; either of which might have sent him to the Tower ; which had interested the king in his case, who would have protected him ; and, perhaps they might not have ventured to send such a capital officer to the Tower, but impeached him in manner as they proceeded against his assistant ; which would have gained his Majesty’s ultimate favour, and been, on that account, his wisest course. But his lordship

¹ As the author of the Proclamation against tumultuous petitions, (see the *Examen*, p. 551, 554, and *Cobbett’s Parl. Hist.* vol. iv. p. 1229.) “His genius,” says North, when speaking of Levinz, “was not above a pleader, and in self-concerns wonderfully cautelous.” He was one of the counsel for the seven bishops, one of whom, Baptist Levinz, Bishop of Sodor and Man, was his brother. On the Revolution, he was appointed by the Convention, with others, to direct that assembly in matters of law. *Ob.* January 29, 1700. (*Noble’s Granger*, vol. i. p. 167.)

knew him to be a mere lawyer and a timidous man, and accordingly left him to himself. And his lordship did not in the least resent the naming him (so degenerously) as he did, but ever after held fair with him as before and gave him common assistances and countenance as if no such proceeding had been. Which, as I said, was a species of humanity seldom practised in the world.

260. But still although the matter of the proclamation came to nothing, the sky was black and good men were not at ease while this parliament sat. They flew so fiercely at the abhorrers and at the succession, and under that, as some thought, at the crown itself, that none could foresee what might happen. The king offered divers expedients and qualifications of power in the successor, which were (most wonderfully) refused; which some thought was only because they did not affect the possession. But what the king might, by importunity and inconvenience, be drawn to yield to for the mischief of the nation no person knew, or, by any foresight, was secure of. The Lord Shaftesbury headed the faction and made an incentive speech in the House of Lords, of which numerous copies were sent the same night, by the post, to Edinburgh. And thereupon the rebellion [A.D. 1679] broke out; of which a full account is to be found in the *Examen*. The same faction started a question about the lawfulness of sending forces into Scotland to quell that rebellion, and whether it was not against the articles of the union in the reign of King James I. as is more largely showed in the said *Examen*.¹ His lordship was of opinion there was no ground for the scruple at all; and afterwards set it down among some other positions which he titled "*Impudent Assertions of the Faction.*" But however, that did not satisfy some counsellors (for the late regulation, or reform, as it was called, was then in being), and that *quære* had got abroad among the officers. Thereupon the king, to proceed formally, ordered Sir William Jones his attorney-general to consider the treaty and the present circumstances, and give his judgment whether forces might be sent or not? and he returned that they might; for forces, sent in aid and at the desire of the

¹ *Examen*, p. 80.

government in Scotland, could not be construed a hostile invasion in the sense of that article. And thereupon the council came to a conclusion and the commissions were ordered. For the court of England was now so steadily determined to act in all things according to law, that the faction could find no way to annoy them but by corrupting the law itself; and what they, forsooth, would have to be law, must be so and nothing else: although, at the same time, when thus they strained at gnats they swallowed whole camels and consequently fully demonstrated the same. It is pity honest men should be so mealy-mouthed and scrupulous as they are apt to be, when, upon the stability of the government, their all is at stake. So in the time of the rebellion of forty-one, when, in the Midland counties, the rebels raged in arms and acted downright hostilities against the crown, the honest gentlemen in other parts of the kingdom, viz. towards the West, were sneakingly disputing whether the king's array were lawful or not.

261. His lordship had, at this time, few friends in court; but next to the king, who was always sure to him, the Duke of Lauderdale was in his perfect amity. The duchess, when she was Countess of Dysart, lived at Fakenham in Suffolk, near to Tostock where his father lived; and the lady resided there for the sake of bringing up her children at Bury School; and, as in such cases is usual, his lordship's brothers and her sons, at breakings-up, were playfellows.¹ This acquaintance made no great advance; but the lady, being a politician professed, and afterwards married to the Duke of Lauderdale, after his lordship became considerable at court called upon his acquaintance and brought her husband to be a familiar friend, who, before had but valued him for his abilities and service to the crown. And his lordship's brother, Mr. John North, for general learning eminent, was also taken into the duke's confidence and friendship; and the duke himself, being also learned, having a choice library, took great pleasure in

¹ Elizabeth Countess of Dysart, in her own right, married, first, Sir Lionel Tollemache, of Helmingham. He died in 1669. The countess re-married, in February, 1672, to John Duke of Lauderdale. Lauderdale died in 1682; the duchess in June, 1698.

Mr. North's company and in hearing him talk of languages and criticism. And these brothers were not seldom entertained at the great house at Ham,¹ and had the freedom of the gardens and library. This great man was a solemn consolation to his lordship, because he could open his mind freely to him and rely upon his sincerity. I must never forget one passage, which happened at dinner at Ham. I have mentioned how his lordship was touched in the last Westminster parliament, but the duke much more fiercely; for he kept the Scotch gates fast, so that rebellion could not enter on that side; which distressed the factious party in the highest degree and drew upon the duke more than one or two addresses to part him from the king; but the king would on no account part with him. So that both these counsellors were as blown deer, and would be glad to have the parliament dissolved; of which, to say truth, the whole nation was weary. And, at this time, the frost was very sharp, and the company at dinner complained of cold, the duke turned, and, looking back towards the window, said, "There will be a thaw soon." None at the table, but his lordship, guessed at his meaning. And so he intended it; for he knew that the parliament would in a few days be dissolved; but his lordship did not, till he guessed so from that sentence of the duke's; and it proved accordingly. And so the duke discovered, and at the same time kept the grand secret, which was the true turn of a politician.

262. About this time, a fatal stroke happened to his lordship, viz. the loss of Dr. North, [A.D. 1683] master of Trinity College in Cambridge, his dear brother and familiar friend. I call it loss; but it was much worse, for he was maimed by an apoplexy, and disabled both in body and mind, which, more or less, is always the effect of that disease: but when it is in a high degree, as his was, the case is most deplorable. It proved that which they call an

¹ Evelyn tells us, that it was "inferior to few of the best villas in Italy itself; the house furnished like a great prince's; the parterres, flower gardens, orangeries, groves, avenues, courts, statues, perspectives, fountains, aviaries, and all this at the banks of the sweetest river in the world." (*Memoirs*. vol. i. p. 470.) The Cabal held their meetings at this house.

hemiplegia, which rescinded the chief use of one leg and one arm, and distorted his countenance, corrupted his speech, and, what was more than ordinary, cast him into convulsion fits, which returned, for the most part, monthly, and not only tormented, but dispirited him, and made the little life he had left, a grievance to him. His friends would willingly have followed him to his grave, unless they might have seen him restored to a tolerable health, and to become that bright and witty, as well as learned and accomplished divine, as he was before. But they were forced, present or absent, to sympathise in his sorrows; for, between four and five years that he lived in this mortified state, he came to a full understanding of his condition; which made it worse, as appeared by divers pathetic letters he wrote from his college in Cambridge. I do not enlarge here upon the circumstances of this good divine's life and death, because I have a small volume express on that subject. Therefore shall only add here that his lordship was made the doctor's sole executor, whereby he came into an excellent library especially of Greek books which the good doctor left, and also a personal estate of about £4000, one fourth of which, by direction of the doctor's last will, was given to poor people.

263. I have already taken notice of his lordship's being made a privy councillor, and of the company that came in with him, who were the stiffest opposers of the court in parliament. [§ 237.] For the Earl of Shaftesbury was made lord president, the Lord Sunderland secretary of state; the Earl of Essex, Lord Russell, Henry Powell,¹ and some others of the malcontent party, were taken in. But this being one of the chief incidents in his lordship's life may require a fair account to be given of it.²

¹ Sometimes spelt Powle, a distinguished member of the Whig party. He is said by Burnet to have been "very learned in precedents and parliament journals, and when he had time to prepare himself, a clear and strong speaker." (*Own Time*, vol. ii. p. 668.) Like some others of his party, he maintained a correspondence with Barillon, the French ambassador, who calls him "a man fit to fill one of the first posts in England—very eloquent and very able." (*Dalrymple's Appendix*, p. 261.)

² On this change in the administration, Sir William Jones had the new-modelling of the bench. "No part of the change," says Burnet,

264. The long parliament, as to all use to the crown, was grown effete or rather unsafe; for the court party were become a minority and the faction in hopes of a better, did all they could to get it dissolved which gave rise to all that noise and stir as was made about pensions. Nothing that the king desired could prevail: but on the other side, plots, and exclusion of the successor were exaggerated to his great disquiet: and, after this parliament was dissolved, another was chosen called the Little Westminster Parliament, which, proceeding upon the battered topics of plots, exclusion, popery and the French, were averse enough to the king's affairs but yet not so bad as some would have had it; for No Popery, no Presbytery, was heard sounding in the House of Commons which those of the anti-court party did not like, because it showed a disposition upon fair opportunity to piece with the crown. Those persons therefore who had influence at court and favoured the faction, never left till they got this little parliament dissolved, as is more particularly showed in the *Examen*,¹ for it was presumed that, as the public was seasoned every election would be more and more averse: and so it proved: for the next parliament flew against the court with more rancour and fierceness than any other had done. The king, hoping to gain a better humour, had done some considerable things, as sending away the Duke of York, offering expedients and, with others, reforming the privy council: for, having dissolved the old one, he made a new appointment and (as I said) took in the chief leaders of the faction in both houses that it might not be said he wanted good counsellors. But, that he might not be left alone with them, he joined some that were, as he knew well, assuredly his friends, among whom his lordship had the honour to be one. In the course of these troublesome times the loyalists were never secure in their own minds that the king would stand the siege which had environed him, but, at length, he must be brought (as the faction thought and verily expected) to surrender at dis-

“was more acceptable than that of the judges.” (*Own Time*, vol. ii. p. 790.) The new ministry was formed under the auspices of Sir William Temple.

¹ *Examen*, p. 503.

cretion; and then they should lie at the mercy of the king's, and their own, implacable enemies. And this pass of reforming the council in that manner seemed an overture of it, as may be found particularized in the Examen. But his lordship, in a short time, could by his majesty's behaviour amongst them discern his firm purpose not to quit the reins nor to let go the magistracy into the hands of his enemies, as was designed he should: and then his majesty's friends were at ease and took heart a grace to act vigorously against the seditious practices of the faction; and the nation in general were satisfied that the king had done enough. And from that time the state of his authority was reintegrated; as the relations of those times, if any good ones appear, will at large demonstrate. As for his lordship's being taken into the cabinet,¹ it was but a token of a more entire confidence in his fidelity and judgment; and that he might be assistant, not only in the formal proceedings of the privy council, but also in the most retired consultations of his majesty's government.

265. After the king was returned from the Oxford parliament, the court was at leisure to look about them. For though the faction had a great shake yet it was not fallen; for Ignoramus was still on foot, and the sound of mischief hatching was heard by certain buzzings about plots. His lordship therefore thought fit to advise, or at least to concur in advice to, his majesty to publish his royal declaration to his people of the causes that moved him to dissolve the two last parliaments, of Westminster and Oxford; which was done, and published. And though it was tart enough upon those parliaments which one would not think whatever the cause was should be very popular, yet, on the contrary, it took so with the sense of the people that the fancy of addressing went on (as was hinted) in a surprising manner. The declaration was penned or adjusted, with all the prudent cautions imaginable; and by his lordship himself, as I verily believe, and do think that by the style it is demonstrable.² His lordship was then,

¹ On the distinction between the Cabinet and the Privy Council at this time, see Hallam, *Const. Hist.*, vol. iii., 185.

² To this declaration a spirited answer was written by Somers, and

and had been some time before, of the cabinet council, and was the chief director in those importune pretences to plots and discoveries that grew very troublesome till that of the Rye. But he had the satisfaction of having the king, for the most part, present at the examinations and also opportunity to insinuate matters of law and cautions to his majesty, that knaves, by coming into his presence alone, might not have a possibility to forge colours to betray or to defame him. For that design was still driven that he might be thought a false suborner and confounder of Protestants.

266. His lordship, in this work, had an especial assistant of the secretary, Sir Leoline Jenkins, a person of great worth, learning (in the civil law) and fidelity. His lordship had no small occasion for the help of such an extraordinary person when he had so much upon his hands, in the examinations of the sham plots of Dangerfield and the rest of those impostors, that wrought between the plot of Oates and the discovery of Keiling, and held his lordship in continual stretch of penetration and caution that the king might be apprised of his danger in letting such cattle, as the pretended discoverers were, come into his presence which they always pressed for ; and the king, who loved to judge for himself, was too much inclined to give way to, and even, sometimes, alone, which might have been of the last consequence to him. But the referring these *fourbes* to the secretary's office to be examined always frustrated their designs ; and not only his lordship, but the king himself, ordinarily attended at the examinations ; which let him into the secret of plot knavery to his no little edification. And however his majesty's enemies abroad defamed him, a true account of these matters, which is to be found in the Examen, will show that he inquired with justice and decorum and determined with as much lenity towards his enemies as ever prince did. And to prick in here one memorial of that good king's understanding as well as equity, I heard his lordship say that in matters heard at the council-table, he never knew

corrected by Sir William Jones. Sidney is said to have made the first sketch of it. (See *Burnet's Own Time*, p. 868. *Examen*, p. 508.)

him determine otherwise than was right. But, to shake off all these illusive discoveries, the only stain they left was a loathing of all manner of plots; and it nauseated the ministers to hear of any new discovery: whereby any that proffered came on against all the prejudice and suspicion that might be.

267. In the interval between the arrest of the lord mayor¹ and June 1683, all was in appearance hush; and the ordinary proceedings of state went on orderly and well: and his lordship was in very good company at court. For the Earls of Halifax and Rochester, and Secretary Jenkins and his lordship consorted together to fit business for his majesty's cognizance and determination; and very often met over night at the secretary's for like purposes, that they might not be surprised and hazard the not understanding each other the next day: and all meaning truly the king's service they were in most things unanimous; and, to hold that firm, his lordship perpetually inculcated the adhering entirely to the law and to do nothing which might give handles to ill people to pretend the contrary. They had power enough that way to make examples of those that were caught offending; and if some escaped it were better than to strain points to crush them. And they had often discourses of recommending men to places of trust; and therein his lordship and the Earl of Rochester, as to a standing rule, differed. The latter was for preferring loyalists, which were such as ran about drinking and huzzaing, as deserving men, and to encourage the king's friends. His lordship was for bringing men forward in offices that had dealt long and were forwardest in them, as most likely to understand the business rather than the most willing friends that understood nothing. But, in this method of administration the king's affairs went on to the satisfaction of all (honest) people; and the chief virtue of it was owing to his lordship who would not forsake the law upon any account. But these ministers of state little thought of a pestiferous cloud that hung

¹ The Lord Mayor—Sir William Pritchard—was arrested at the suit of Mr. Papillon on the 24th April, 1683. (*Memoirs of Thomas Papillon*, p. 229.)

over their heads and was to have broke full upon them the March following; when an infernal combination of men were to have attacked the king's coach, as he returned from Newmarket.

268. Keiling, one of the assistants at the arrest of the lord mayor, a secretary and deluded by a faction, otherwise a good liver and honest at the bottom,¹ made the first discovery of this horrid design. Whether pure conscience or detestation of the mischiefs he knew were to be perpetrated, moved him, I know not; but it is certain that no combination, temptation, or prospect of reward drew him forth. He first made means by the Lord Dartmouth, then belonging to the Tower, to be brought to the secretary's, and there in a plain manner declared the whole. His lordship was at the examination; and, when he came home at night he told us that a discovery had been made of a most horrid plot against the king and duke; but he could not tell what to say to it yet: for the court had been so fatigued with searching into false plots that they came to an examination of a true one as bears to the stake; and, as to crediting, were very nice and scrupulous. They scarce believed Keiling who was but a single witness. But he, either out of zeal to prevent so much mischief as he saw coming on, or lest, if he were seen at the secretary's office by any of the conspirators, it might cost him his life, went away, and next day came again and brought his brother with him who confirmed what Keiling had discovered and fully convinced the lords that he spoke true. Then warrants issued and proceedings were had: and when his lordship came home that very night he told us that he believed the discovery was true. But, as persons were taken up and confessed, the evidence was yet more full and incontestable; as is particularized in the *Examen*.² And the part his lordship acted in the discovery, is already related.

269. Now as concerning the state of his lordship's interest,

¹ He is described by Burnet (*Own Time*, vol. ii. p. 940), as "an Anabaptist in London, who was sinking in his business, and began to think that of a witness would be the better trade."

² Page 378, *et seq.* For a full history of the Rye House Plot, see *Howell's State Trials*, vol. ix. p. 357; *Life of James II.*, vol. i. p. 738.

it was most notorious that by eminent services performed through all the troubles of the court, and now finally in contributing so largely, as he did, towards clearing up all these brigues and embroils of the city, and all clear and hearty, and as done cordially and *ex animo* and not after the adulatory manner of a court, he was now so confirmed in the king's good opinion, not only for his knowledge in the law and all abilities but also for his sincere good will to do him service, that no art or industry of any person or party or interest in England (although great endeavours and of strong parties were used), could make the least impression on the king's mind to his prejudice. Once, at a couchee, a courtier was pleased to say that his lordship was no lawyer. The king over-hearing looked sourly over his shoulder, and said that, "whoever said so did not know the Lord Chief Justice North." And although, at court, there are always a sort of underminers who would, if they durst, have been nibbling at him, they never could in that king's reign gain the least glimpse of encouragement that way. I might have mentioned in a more proper place, a passage which must not be forgot which happened during the sitting of the Westminster parliament; when his lordship was, at that time, said to be impeached for the proclamation against the petitioners. Whilst he was sitting upon the woolsack (as the king thought) pensive, his majesty came and clapped himself down close by him, and, "My lord," said he, "be of good comfort; I will never forsake my friends, as my father did;" and rose up and went away without saying a word more. And this encouragement was welcome and gratefully accepted. At length Sir George Jeffries was made chief justice of the King's Bench and took upon him the conduct of that great work; I mean of working counter to his lordship; as will appear in the next stage of his life.

270. Before I lift his lordship up into his next and last stage, I shall remember an incident or two that fell out in the Common Pleas before he left the cushion there. One was a trial at the bar, which, in Westminster Hall, was called "the trial of the Lord Chief Justice North;" which drew abundance of auditors more than used to be at such trials. The fancy was that one of the parties was the

father of Mr. Robert Foley, his lordship's brother-in-law ; and many concluded that he would discover a partiality in it. The bench always carried themselves fair and without any affected opposition to his lordship ; except Judge Atkins, who took all opportunities to cross him, and thought to have done it sufficiently in this trial. The cause was of a bill of £800 whether satisfied in accounts or not ; if not, it was with Foley ; otherwise, with one Sands the defendant. The matter was very intricate ; and his lordship conducted the trial with exact order and full latitude to the counsel. He sifted all the evidences with his usual sagacity and judgment ; and no one could perceive any tendency of opinion one way or other, till he came to sum up the evidence and direct the jury. And then he recapitulated the evidence and gave to every article and circumstance its full force ; and, showing how the balance fell, concluded that the weight was on the plaintiff's side, for whom he thought they had reason to find. The two next judges the same. But Atkins thought to direct as clearly on the other side and began most furiously that way ; but, in the middle of his talk, found himself in a wilderness and that he could not carry it through ; and thereupon, in a most surprising manner, shifted his sails and fell into the same strain as the other judges had discoursed, and concluded for the plaintiff ; and so, the court being unanimous, the verdict went accordingly. And this was such a turn in speaking as I never observed, before or since, to be made by a judge on the bench.

271. This Judge Atkins made an open opposition to his lordship about the disposal of a prothonotary's place, which is known to belong to the chief justice. But he thought fit to stir up his brethren to put in for a share ; and there were some words and altercation passed in court about it. His lordship told his brother Atkins, " that he should know here was no republic ; " and the other answered, " No, nor monarchy." ¹ But the new officer was at last sworn. His

¹ Sir Robert Atkyns was a justice of the Commons Pleas in 1672, and displaced in 1679, on account, as it is supposed, of his connexion with Lord Russell and the Whigs, to which the chief justice alludes in the text. After the Revolution he was made chief baron of the Ex-

lordship hath left a note of these bickerings from his own pen; which I think for full intelligence of the matter to subjoin in his lordship's own words.

272. "1680. In the last vacation, Mr. Townshend, the second prothonotary of this court, surrendered into the hands of the *custos brevium*; and the *custos brevium* presented to me Thomas Winford (who had formerly been philazer of Surrey, &c., and surrendered that office into my hands) and desired me to admit him. Whereupon I did administer to him the oaths of allegiance and supremacy, and the oath of his office. And this was done by the preparation and advice both of the *custos brevium* and Mr. Robinson, the chief prothonotary. But being about to put him in corporal possession of his office, the other judges alleged they ought to allow him; for his admission was an act of the court, being done in court. I insisted upon it that it was incident to my office, and, in that right, I put him into possession. I undertook to satisfy them of it the next day. And, accordingly, I showed them the case in Moyle's entries, fol. 3. Trin. 12 Edw. IV. rot. 494. and pasch. 3 Car. rot. 42. and all late entries which expressly say it is done by the chief justice in right of his office: nothing being mentioned of the consent of his companions or of the act of the court. Dyer, 150, saith that the chief justice '*contulit officium capitalis prothonotarii contra voluntatem aliorum justiciariorum qui judicabant alium esse magis idoneum.*' This shows that, if he who gives an office finds one that is *idoneus* it is sufficient, although another man may be more fit. That, to remove an officer, it must be the act of the court; and therefore D. 115. a. said that a discharge was '*ex assensu sociorum suorum.*' That I thought he might be sworn in my chamber, as Mr. Wirley was, who was never sworn in court; and necessity speaks when the office becomes void in vacation time. Nevertheless I did not oppose; but he should, for solemnity, take his oaths in court, as Mr. Robinson did, after he had been privately sworn. Whereupon, my

chequer. His constitutional writings are well known and highly appreciated. See Mr. Hargrave's remarks upon them. (*Preface to Hale's Jurisdiction of the Lords*, p. 189.)

brothers insisting no farther, he was sworn in court and I put him in possession and put on his cap, and declared I did it in my own right and not as an act of the court; which was in no ways contradicted; and I ordered Mr. Robinson to make his entry as in former times which did fully explain it."

273. But, in this confirmed state of credit with the king, it cannot appear strange that, during the infirmities of the Lord Chancellor Nottingham, his lordship in a sense almost universal was his presumed successor as if he had been previously declared so. For while his lordship was chief justice of the Common Pleas, he often was constrained to take the place of speaker and preside in the House of Lords in the room of my Lord Nottingham the chancellor, who, towards the latter end of his time, was much afflicted with the gout and in other respects very valetudinary. I have known him sit to hear petitions in great pain and say that his servants had let him out though he was fitter for his chamber. It was the care of the king's ministers to have always a commission dormant in the house for appointing a speaker in the absence of the chancellor; else, the lords, coming to sit, and finding none to take the woolsack would be apt to choose of themselves; which was a precedent the court did not care should be made. By these vicarial offices in the house his lordship was educated to the employ there when it should fall to his share in chief. Having therefore brought his lordship to the *ne plus ultra* of all that his profession of the law could by any means entitle him to, we rest him here, and, after some few reflections upon his conduct and character, take the rise of a new posture of his employments; which is the fourth and last stage as I have designed to distinguish in the course of his life, and which I have presumed to entitle his ministry: and for that station of authority, if knowledge be an apt qualification, he was a non-pareil; for next to Machiavel, none ever understood human nature better. He had noted down one would think all the disguises and false pretences that ill men use, and, not only all the common frauds of men but also the great cheats of the court and officers of the revenue. All which are brought together and put with some matters historical

and political; which, if required, may speak for themselves and prove that what I say is neither hyperbolical nor partial.

274. But this distinction of his lordship's ministry is not designed to exclude the former time, that is after he was called to the privy council and then to the cabinet, which happened before he had the great seal committed to him; for then also he was really a minister of state and was so looked upon and respected at court. And this brings into my mind some pleasantries of his lordship upon that subject. Once, in a good humour and laughing at himself, he told us that he found by two infallible tokens he was thought to have a considerable interest at Whitehall. One was, the respect paid him by the foreign ambassadors; and the other was the Lord Craven's whispering. As for the first, he observed that in the rooms at Whitehall whenever any of the ambassadors looked towards him and thought he perceived it, they very formally bowed: and for the other, that is the Lord Craven, he was an old soldier of the German discipline, and, being also an old Cavalier, had a chief command in the Guards.¹ Among other of his foibles, which were not a few, one was to seem intimate with rising men and that by most fastidious whispering of politics in their ear. This inconvenience had found his lordship out; and when he was put past his patience and escaped to his friends he used to call him an earwig. To conclude this with a merry story. The king, seeing the Lord Dorset, a prime wit of the time, standing seriously under the infliction of the Lord Craven's whispering for a considerable time together, after they were parted, asked him very gravely, "What it was that my Lord Craven said to him?" He answered as gravely, "That my lord was pleased to whisper but he did not think it manners to hearken."

275. But to proceed, as I hinted, to somewhat of character such as might be observable in this stage of his

¹ This gallant old lord was in command of the Guards at Whitehall, when the Prince of Orange's Dutch troops were ordered to mount guard at that palace; "when the stout Earl of Craven resolved rather to be cut to pieces than to resign his post." The King, however, interfered to prevent the bloodshed. (See the Duke of Buckingham's Account of the Revolution, in his *Works*, 4th edit.)

lordship's life. Now, in the height of his reputation, he knew well that the two grand parties, Papist and Fanatic, were always urging their several projects at court ; and if either got ground it would be to his disadvantage ; the former to remove and the other to ruin him. And he considered also that no stability at court will continue long, but novelties will, more or less, obtrude. These considerations filled him with thought ; the rather because he could discern a rising emulation under him of such as, if they could not wound, laboured to defame him ; whereof I shall have enough to say afterwards. These matters made him carry himself steadily in the king's service, not only as judge but counsellor ; and in such manner as, living and dying, whatever happened, he should have his justification (in his own mind at least) full and complete.

276. The family, of which his lordship was descended, in almost all the branches of it, was most susceptible of passion. But his lordship was esteemed free from that weakness, being in all his judiciary course a most patient hearer, and scarce ever perceived to fall under the impotence and indiscretion either in speech or behaviour which angry men are obnoxious to. He used to argue men into good order rather than chide. He was not easy under impertinence ; but gave way to it if it came in the regular course of practice ; but when out of order he less endured it. And when men were perversacious before him and would not acquiesce in his reasons, his way was to sting with a pointed word or two ; but never lost himself so as to vilify and revile over and over again or discover any distemper in his mind. And, for all this, I know he was at the bottom as much inclined to passion as any one of his race ever was ; but his judgment showed him the vanity or rather mischiefs of such disorders ; and his reason and the force of his resolutions enabled him, on all occasions, to contain himself and to curb the very first risings of passion ; and that in such a degree that he was taken almost for an insensible ; and some of the courtiers fancied that he was a man that any thing might be put upon. It frequently happened that his lordship, being provoked, would warm, as I could discern by the air of his countenance ; but few less acquainted with him could perceive any thing of it ; and he was the more

silent as he discerned any such emportment in himself; and accordingly affected a temper and forebore to say many things he should have uttered if he had not discerned the rising. Sometimes ill people, especially of the Fanatics, would importune him in a manner that made him believe they did it on purpose to divide him from his temper, and, by some imprudent behaviour or speeches, expose himself: for they who were offenders and must abide the correction of the law, desired that the judge would show an inordinate passion that it might be thought they suffered under his displeasure, rather than as breakers of the law. In these cases, which were very frequent before him, he used to be as tame as a lamb; but failed not to pronounce critically the law with manifest reasoning, which disappointed them every way. And surely, if ever there was a workman at curbing all efforts of passion it was he: and those in whose way he stood, and were called the Fanatic party, had an inveterate desire, if by any means they could, to get rid of him; for he was one against whom no snares had any success and no advantage could be gained. If he had been a dissolute ranting man, as some were, or a weak imposable wretch, they had liked him much better. In a word: of one, by nature passionate, use had made him habitually mild and temperate.

277. His lordship was bred *in foro contentioso* and had studied the art of advantages, as gamesters exquisitely practise; and in that school it is a principal maxim, that "if you cannot gain upon the adversary be sure let him not gain upon you. Accept the play offered; but offer none, for fear of being cross bit." And the foundation of this noble art is to manage so as to put the adversary into a passion and to be calm yourself. I have heard his lordship discourse much upon this subject; and he said that passion had a credit with him; for wherever it appeared he commonly found the honesty lay. He could discern often, when wrangles came before him, the steps of a knave in working the adversary and then making his advantage against him. As for instance, the knave would stand the being accused of all the evil that could be uttered by an intemperate man against him, and not be moved; for, perhaps, he knew it all to be true. Then would he give the

other a dry lash or two, that put him into a passion that made him guilty of many indecencies. And then he would reply mildly, "Pray, Sir, contain yourself I shall say nothing but what is true." "True?" said the other in a rage and went on. Then the knave turned to the judge, and "My lord," said he, "you see this gentleman hath conceived a displeasure against me; I know not for what; I never did him any wrong." And then proceeded to charge all their difference upon the other's passionate quarrelsome humour. His lordship was for this reason apt to think passionate men honest, because passion, from the nature of the thing, is always in earnest. But as to his lordship's command of his own passion in cases of displeasure, and how, with nice turns of speech, he often used to divert the matter, I shall give an instance or two. Once a carrier had grossly abused him and to a considerable loss. "Now," said he, "if I had not been a lawyer I should certainly have sued this man." And upon a like abuse which no man could well have borne with patience, he only said, "Now should I be very angry with this fellow if it would do me any good." I remember, at his table, a stupid servant spilt a glass of red wine upon his point band and clothes. He only wiped his face and clothes with the napkin, and, "Here," said he, "take this away;" and no more. I do believe that this seeming apathy which was the effect of his reason and just estimate of things with respect to his character and good or evil consequences, was prejudicial to him at court; for the trickers and jesters there (as I hinted before) thought he would bear any thing. But he showed most of them, and to their faces, that he knew how to resent; as I have touched, on occasion of the calumny of the rhinoceros, in proper place.

278. There were yet some occasions of his justice whereupon he thought it necessary to reprehend sharply. As when counsel pretended solemnly to impose nonsense upon him, and when he had dealt plainly with them and yet they persisted, this was what he could not bear, and if he used them ill it was what became him and what they deserved. And then his words made deep scratches, but still with salvo to his own dignity which he never exposed by impotent chiding. The properest instances that I can give of

this temper, will be the showing some impudent assertions of the times urged to him, or where he came, with no reason of law, but being utterly against both, and only the will and pleasure of a faction, to warrant the brazen nonsense, was extant to maintain them. These his lordship had set down in a paper, and titled them "Impudent Assertions," to which I will annex a postil for explanation.

279. "1. That a *Certiorari* should not remove an indictment."

In the famous reign of Ignoramus, the grand jury of Middlesex thought fit to indict the Duke of York, the king's brother, for not coming to church for a month, that is for recusancy; and it was thought fit that the indictment should be removed from the sessions at the Old Bailey up to the King's Bench, in order to a *non pros.* there; and accordingly, a *certiorari* was brought and delivered to the officer. Then comes a sergeant at law to move that it might not be allowed. His lordship was then the senior judge upon the bench and gave the rule. He asked the serjeant with what confidence he could come there to pretend that the court of Oyer and Terminer should not obey the process of the superior court of King's Bench? But nothing that he could say would silence the serjeant, who still urged that the indictment ought not to be removed; than which nothing could be more provoking to his lordship, who only told the serjeant "He spoke with a cadence but all that he said signified nothing." This short reproof fell so un-luckily that the worthy serjeant, for many years after, among the lawyers was called Jack Cadence.

280. "2. That the sheriffs of London were judges in the common hall, and that it was the husting's court."

Of this in the Examen.

"That an Habeas Corpus did not lie for Mr. Pepys and Sir Anthony Dean, and they not delivered upon it till a dissolution."

281. 3. These gentlemen had, in their hands, the affairs of the navy; and being creatures (as it was termed) of the Duke of York (and their places very profitable) there was a fierce disposition to remove them. And thereupon factious crimes were stirred up; as (for instance) that they revealed to the French the state of our navy; for which the only

evidence was a gentleman who saw, at Paris, a list which must be presumed to have come from them. Whereas it was no other but a list formerly published by order of the Admiralty, and cried about the streets in London. But, in fact, these gentlemen were committed by the House of Commons as for crimes at large triable at the common law, and not for either contempt of the house or breach of privilege. But notwithstanding all that, upon counsel urging that the Habeas Corpus did not lie, they could have no law for their liberty till the parliament was dissolved. His lordship was no judge where that cause came; but he used to exaggerate the monstrous impudence of counsel that insisted so iniquitably.

“That the king cannot pardon an impeachment.”

282. 4. This is largely treated of in the *Examen*. But, in his lordship's sense the question was just as fair as if they had said that the government of England was not monarchical. The king was the proprietor of all public justice; which all people allow. And what should distinguish away his right in one court, viz. the House of Peers, more than in all the rest? And likewise, when one body of men are the accusers; that is, have the part to inflame, more than another? Unless it be said that the—— are sharers in the sovereignty.

“Prisoner not acquit but the jury discharged, and the same witness afterwards spake fuller, and convicted.”

283. 5. This is the case of Whitebread the jesuit,¹ and will be found more fully in the *Examen*. There was a double enormity here; first, not trying the prisoner when all things were ready and the jury charged. Next, taking the same testimony only new instructed. But his lordship might be inwardly displeased at this and the next. It is sure enough he did not appear in public to resist either. Which must be charged upon the ardour of the times and the fruitlessness of appearing; and if that be not cause enough of silence it must remain, on his lordship's part, unanswered.

“Confute dying sayings, in order to convict others.”

284. 6. This was under the same rage of the times. His

¹ See his trial in *Howell's State Trials*, vol. vii. p. 311.

lordship was not president to manage the trials. I can well remember him bitterly concerned at the impudence of such proceedings; but he knew not how to help them.

285. His lordship was commonly reputed a high flier or prerogative-man.¹ It is true enough that his judgment was to give the crown all its lawful prerogatives; and he would willingly have consented that it should have had, in some cases, title to more; as I have showed in his lordship's ministry. But that he was not equally just to the people in all their rights as well of form as substance is utterly false. If we justly regard his censurers it will be found that his chief blame, at the bottom, was only that he would not sacrifice the law to the iniquity of the times, and, contrary to manifest duty, deny justice to the crown; and so in other circumstances as faction favoured. This was demonstrated by the sequel; for while he was of opinion that the Tory party in the temper of those times pursued the true interest of England, that is to support the church and crown, according to the legal establishment of both, he was a Tory as they called it. But when the Tory party, or rather some pretended leaders, exceeded in joining with such as exalted the power of the crown above the law and sought to pull down the church; then he was dropped from the Tory list and turned Trimmer. And so any firm honest man shall find himself, as it were, changed; when in truth he is the same; only the world to which the change belongs passeth by him.

286. I have heard his lordship discourse much of ignominious distinctions and particularly that of Whig and Tory. I have given the history of this party distinction

¹ The young lawyers of North's day were mostly attached to the country party. "So few gentlemen of the law were noted for loyalty, (I use the word of that time) that it was made a wonder at court that a young lawyer should be so. The reason was, because, at the time of the Restoration, the profession, that commonly follows the encouragements, was not well furnished with Cavaliers, and the chief practice fell into the hands of those who before had the vogue; although some of them, by virtue of the Act of Indemnity, escaped practising at the Crown-bar as defendants for themselves. This made it a fashion for those that rose up under them to be against the court, for they would allow none else to be good lawyers; which was a prejudice that only great abilities, with some favour, could rise up against." *Examen*, p. 513.

in the *Examen*; ¹ where I have showed that the faction began the game and not the loyal party, as some now would persuade us: so shall say only that when the exclusion bill, to disinherit the Duke of York, was brought forth, all the factious people and their libels chimed in to defame the duke; and among other topics that of entertaining the Irishmen was one. Whereupon his friends were termed Bog-trotters, wild Irish, or, which means the same thing, Tories. And there was such a pregnancy of contempt in that word as made it current; and the Loyalists had it at every turn, with the epithets of damned, confounded, and the like. His lordship observed that the Loyalists were not at all ashamed of the name, but took and owned it as their honour; which he said was the best way to frustrate the wicked intent of the other side which was to cast an ignominy upon them. And so the primitive Christians did; for that, which the heathen cast in their faces as the greatest reproach, they accounted their glory, which was the cross. But it was not long before the Tories made full payment by the term Whig; as will be found more particularly related in that book.

287. I should do an injustice to the honour of his lordship's memory if I should go about, by any reasoning of mine, to vindicate either his probity, virtue or justice; all

¹ See the *Examen*, p. 326. The origin of the names Whig and Tory is generally referred to the period of the Exclusion Bill. On the prorogation, which took place in consequence of that measure, numerous petitions were presented to the king, praying that parliament might be again assembled; and, in opposition to these, counter-petitions were sent up, in which the petitioners stated their *abhorrence* of the proceedings adopted by their adversaries. The two parties were consequently termed *Petitioners* and *Abhorrrers*, names which were shortly after changed for what were considered the more reproachful appellations of Whig and Tory. "The word Tory," says Roger North, in the *Examen*, "which signified the most despicable savages amongst the wild Irish, being a vocal clever-sounding word, readily pronounced, kept its hold, and took possession of the foul mouths of the vulgar."

On the other hand, the Tories were not idle in discovering a *sobriquet* for their enemies. After adopting and abandoning several words, as not sufficiently expressive of their bitterness, they fixed upon the term *Whig*, "which was very significative," says Roger North, "as well as ready, being vernacular in Scotland (from whence it was borrowed) for corrupt and sour whey;" a derivation in which, however, Burnet does not agree with him. (See *Own Time*, vol. i. p. 66.)

which were amply conceded to him even by his adversaries; which they expressed by owning him an excellent justiciar; and that includes all the rest. An excellent account, indeed, of a betrayer of his country, as some laboured to have him thought! And how little a disposition he had to be a Papist or popishly affected, as in those times was canted, the whole series of his behaviour demonstrated: for, as to his person, he ever kept his church and frequented the sacraments, as the congregation of St. Dunstan's and St. Giles's could testify for many years; in which churches he had a seat for himself and his family. If at any time in his life he failed, it was when he was overwhelmed with business; and then indeed he took liberty sometimes, saying that Sunday was a day of rest. But he was scrupulously constant in those days when he was a judge and his person conspicuous, that he might be neither wanting in good example nor be positively a bad one. As to his justice, no man was more exquisitely bred a judge than he was; for, besides his acquisitions by the study of the law, in the greatest fulness of it joined with general scholarship he had been, for many years, a leading practiser under judges of all capacities and humours; and knew the trick of blinding a judge by raising mists or imposing false colours. No art or cunning in business was new to him; and, when it was his turn, no counsel could gain upon his steadiness by any stratagem they could invent to put upon him. He was ever beforehand with them and showed he knew their tendencies; though the greatest artists that have been known in Westminster Hall, as Maynard, Jones, &c. practised under him.

288. At his first entrance upon his judicial employment he bent his mind to find out ways of easing the people that had the ill fortune to be brought under the jurisdiction of Westminster Hall, either as plaintiffs or defendants. I have already showed how much a friend he was to a public register of titles. He was a declared adversary of all frauds, fraudulent conveyances and forgery. He was never so alert in all his faculties as when, upon examination or trial, he suspected any such falsities. After he had sat on *nisi prius* causes in London and Middlesex, where commonly a constant set of men attended upon juries, especially

in London, a competent time, he was so much in credit with them by his clear way of presenting the facts to their consideration and his just reasoning thereupon, that they very seldom, if ever, found against his opinion. And, with this character, I close this third, or judicial, stage of his lordship's life: as to which, and the rest, I may be thought over much his friend in expressing so much good and so little evil of his lordship; which, with some, may seem above human frail nature to allow. But I am serious and write as if I were sworn; entirely assured that all the good is true and the evil of him no other, nor more in any respect, than in this work I have expressed.

289. The Lord Keeper Finch, as was hinted before, had been an unhappy valetudinarian; and, about the time when the king began to be at ease and free from the brigues of plots, declined very fast, and at length seldom came forth, and was just able to do business in chancery which was familiar and easy to him; but the affairs at court had forsaken him, or rather he them, and all settled upon his lordship's shoulders who dealt with all imaginable friendship and candour with respect to my lord chancellor; kept troublesome matters from him, and when it was necessary for him to be troubled, or if any persons were perceived to be creeping towards him with snaring propositions, his lordship always prevented them by giving the chancellor intimation and friendly hints; so that, in his weakness, he was seldom or never surprised; than which there could not have been greater instances of service done him. And I believe there never was predecessor and successor such cordial friends to each other, and in every respect mutually assistant, as those two were.¹ His lordship's often taking his cushion in the House of Peers in his absence, and acting in many things as co-chancellor, made it no wonder if at his utmost declension, his lordship was, by the whole nation voted into his seat.

¹ Burnet has thus described the two. "By the death of the Earl of Nottingham the seals were given to North, who was made Lord Guilford. He had not the virtues of his predecessor, but he had parts far beyond him. They were turned to craft, so that, whereas the former seemed to mean well even when he did ill, this man was believed to mean ill even when he did well." (*History of his Own Time*, vol. ii. p. 921.)

290. And therefore I come now to his lordship's last and highest step of preferment in his profession, which was the custody of the great seal of England. And, for conformity of language, I call this a preferment; but, in truth (and as his lordship understood) it was the decadence of all the joy and comfort of his life; and, instead of a felicity, as commonly reputed, it was a disease like a consumption which rendered him heartless and dispirited, till death came which only could complete his cure. When the lord keeper lay languishing, his lordship (being newly returned from Windsor) with a charge of privacy, told us that he had there received an intimation that the great seal would be put into his hands; and that he had represented himself as most unfit for the place; and with all his art and skill had declined it. It seemed that this intimation was from the king himself.¹ His lordship seemed then inclined, or rather resolved, if it were offered to refuse it.

291. The tenour of our discourse with him, on this occasion, was that it seemed impossible for him to carry it off so; for all agreed, that, as things then stood, he was the only person capable of the place: and while it appeared that the king's service was deeply concerned, if his majesty commanded, how could he refuse? It would be said that, having been already so well preferred and honoured by the king who had a singular value and respect for him, and by the influence of his majesty's favour he had greatly advanced his fortunes; now, in the crisis of his affairs, when his lordship's service in that post was not only useful but in a sort necessary, he must submit as a condemned person or incur the censure of tergiversation and ingratitude and have no ease in his thoughts, on that account, as long as he lived, if he should not conform to his majesty's pleasure in this great emergence. So we. But he might think, and not without reason, that we regarded our own advantage by his promotion: so there was self-interest in persuading

¹ In a letter from the Duke of York to the Prince of Orange, dated 18th December, 1682, the duke says, "We came this morning from London, where I do not know whether the lord chancellor were dead or alive, he being speechless last night. It is believed that Lord Chief Justice North will succeed him, who is both able and bold, as well as loyal." (*Dalrymple's Appendix*, p. 53.)

him so much to his inconvenience. But at length he owned himself convinced that he could not peremptorily refuse the seal: not so much for what we had alleged to him but the state of the times which inextricably obliged him to the service of the crown in this conjuncture. Besides, if he rudely broke off, he wounded his interest and could not answer that favour enough would survive to keep him in the place he now had; nor that faction would not play higher at him than ever it had done. Therefore he must make good his ground and not be retrograde and so keep entire his protection. But yet, as he said, he would never accept the seal without a pension along with it. And this is plain enough from the hints his lordship left behind him, which I have set down as follows:—

“Desire to avoid and silence. Lord chancellor dies, notice, and decline without pension. Seals deliver, and manner.”

292. These are all in series of the same matter: therefore I shall pursue them as they lie. It appears first, that when the intimation was given to his lordship he made no answer; which is understood by the word silence. After the Lord Chancellor Finch was dead, and some time before, all the handles that could be were held out as temptations to him to sue for the place. This was the cunning of the Lord Rochester, then chief in the treasury, who was working the husbandly point to save the pension; which he might perhaps do better if the place were asked than if it were proffered. But his lordship, as he wrote, answered all with silence. But this artful proceeding of the Lord Rochester was plain enough to be discerned; and his lordship would have smelt a subtler trap than that. When the time was taken at Whitehall to make the proffer from the king directly his lordship insisted not to accept, unless a pension was added. For the charge of living in that high station was not answered by the ordinary profits of the seal; and he could not without his majesty's bounty, such as had been allowed to his predecessor, undertake to comport with that dignity as his majesty's honour and service required and would be expected from him. His lordship was much opposed and argued with upon this point with persuasions not to capitulate. It was dangerous

to do it and not for the king's service ; for such, being now yielded to, would rivet a precedent. The Lord Nottingham had indeed a pension ; and now another would turn it to a salary, as of course, to charge the crown. It would be much better to accept the seal, and rely upon his majesty's goodness, who doubtless would do better things in a way of bounty, than upon terms.—But these, and other court syllogisms, were fitter for chickens that would peck at shadows than for his lordship, who, all the while, resented their ill usage and mean opinion of him ; and one of less temper than his lordship would scarce have borne it. But his lordship persisting, it was condescended to that he should have a pension of £2000 per annum ; and then his lordship seemed contented to accept, and the king came and put the seal (in the purse) into his lordship's hand, saying, "Here, my lord, take it ; you will find it heavy." And therein his majesty acted the prophet as well as the king ; for not long before his lordship's last sickness, he told me and divers other of his friends, "that he had not enjoyed one easy and contented minute since he had the seal."

293. The evening when he went upon this errand to Whitehall, some of us stayed in expectation of his coming home, which was not till near ten ; little doubting the change that was to happen. At last he came with more splutter than ordinary, divers persons (for honour) waiting upon him and others attending to wish him joy, and a rabble of officers, that belonged to the seal completing the crowd which filled his little house. His lordship by dispatching these incumbrances, got himself clear as fast as he could ; and then I alone stayed with him. He took a turn or two in his dining-room and said nothing ; by which I perceived his spirits were very much roiled ; therefore I kept silence also expecting what would follow. There was no need of asking what news, when the purse with the great seal lay upon the table. At last his lordship's discourses and actions discovered that he was in a very great passion, such as may be termed agony ; of which I never saw in him any like appearance since I first knew him. He had kept it in long ; and, after he was free it broke out with greater force : and accordingly he made use of me to ease his mind

upon. That which so much troubled him was the being thought so weak as to take ill usage from those about the king (meaning the Earl of Rochester), with whom he had lived well and ought to have been better understood. And, instead of common friendship, to be haggled withal about a pension as at the purchase of a horse or an ox; and after he had declared positively not to accept without a pension, as if he were so frivolous to insist and desist all in a moment; and as it were to be wheedled and charmed by their insignificant tropes; and, what was worst of all, as he more than once repeated, "to think me worthy of so great a trust and withal so little and mean as to endure such usage, as was disobliging, inconsistent, and unsufferable. What have I done," said he, "that may give them cause to think me of so poor a spirit as to be thus trifled with?" And so on, with much more of like animosity which I cannot undertake to remember. And after these exhalations, I could perceive that by degrees his mind became more composed; and time, that conquers all things, dissipated these personal resentments, and made way for troubles of a stronger impression. And afterwards like a good Christian he forgot and forgave, making no dependences or troubles to himself or others, especially not to offend the king, on account of any distaste; but corresponded and co-operated with all those which his majesty thought fit to serve him with all easiness and affability. This is a method not much practised by courtiers and insulting favourites, who breathe nothing but ruin and destruction to all that offend them; but in the ease and happiness of a monarch, a jewel not inferior to any that can shine in his crown. After this his lordship applied himself to the establishment of his family and officers. He went to Westminster Hall the first time, as usual, with an honourable parade of nobility &c. for honour attending him.¹ It was some time before he could be possessed of

¹ Amongst the friends who came to congratulate the new Lord Keeper, was John Evelyn. "Sir F. North, being made Lord Keeper on the death of the Earl of Nottingham the Lord Chancellor, I went to congratulate him. He is a most knowing, learned, and ingenious person; and, besides having an excellent person, of an ingenuous and sweet disposition, very skilful in music, painting, the new philosophy, and political studies."

the great house in Queen Street, where the seal had been formerly kept, and had a room fitted for hearing motions and causes in equity. And till then he kept his days in the Middle Temple Hall; else he moved not but when he went to take his ultimate rest at Wroxtton.

294. By his acceptance of the great seal he became, as before of the law so now of equity, a chief or rather sole justice. And more than that, he must be a director of the English affairs at court, as chief minister of state with respect to legalities, for which he was thought responsible. So what with equity, politics and law, the cares and anxieties of his lordship's life were exceedingly increased: for either of these provinces brought too much upon the shoulders of any one man who cordially and conscientiously espouseth the duty required of him, to be easily borne.

295. As for the business of the chancery our work will be short; because that province was easy to his lordship; except only when his time was retrenched so that he could not sufficiently attend it. He had been a capital practiser there as solicitor and attorney-general, and in the front of business for many years; which made the whole tour of that court familiar to him. The greatest pain he endured moved from a sense he had of the torment the suitors underwent by the excessive charges and delays of the court. For the easing of whom he was always in thought, more or less, to contrive ways and means of expedition and retrenchment of charges. As the business of that court is more and of greater value than that of other courts, so are the abuses more felt; and, consequently his lordship was more intense in his meditations to regulate them. And the truth is, a court, as that is, with officers and fees proper for a little business such as the judiciary part anciently was, coming to possess almost all the justice of the nation, must needs appear troubled.

(*Evelyn's Memoirs*, vol. i. p. 513.) By the *new* philosophy, Evelyn means experimental philosophy. At an early period, it was customary for the Chancellor, on the first day of the term, after his appointment, to ride on horseback to Westminster, accompanied by the judges and other distinguished persons. Lord Shaftesbury, on obtaining the great seal, resolved to revive this custom; and we are indebted to Roger North for an amusing account of the cavalcade. *Examen*, p. 57.

For it began with common petitions and the defendant's answer wrote on the back of it. And, when the process was young, a *subpoena*, which was a legal writ, and attachment upon it for disobedience carried great terror. But when the terror of that abated and defendants came in but slackly, then addition was given to the terror, and proclamations were to be made upon the second attachment if the party hid away from the first; and if that second proclamation did not fright him in then he was a rebel, and commissioners, that is a petit army was raised to fetch him in, as standing out in rebellion; and there was an end. But if he was caught and escaped then the king's serjeant at arms went to look for him. But sequestrations were not heard of till the Lord Coventry's time, when Sir John Read lay in the Fleet (with £10,000 in an iron cash-chest in his chamber) for disobedience to a decree, and would not submit and pay the duty. This being represented to the Lord Keeper as a great contempt and affront put upon the court, he authorized men to go and break up his iron chest and pay the duty and costs and leave the rest to him, and discharged his commitment. From thence came sequestrations; which now are so established as to run of course after all other process fails, and is but in nature of a grand distress, the best process at common law after a summons such as a *subpoena* is:—what need all that grievance and delay of the intervening process?

296. His lordship was sensible of the prodigious injustice and inequitable torment inflicted upon suitors by vexatious and false adversaries, assisted by the knavish confederating officers and other chicaners that belong to the court. He was no less desirous heartily to apply all the remedy he was able to so malignant a disease of which he had had full experience, and he had frequently observed it in the course of his practice. For the Lord Keeper Bridgman, and Lord Nottingham, gave all liberty to counsel and officers; so that then the not very commendable trade of the court ran high.¹

¹ Sir Orlando Bridgeman was made Keeper of the Great Seal 30th August, 1667; the Earl of Shaftesbury became Chancellor 17th November, 1672; Sir Heneage Finch (created Earl of Nottingham in

297. The Lord Bridgman, who was a very good common law judge, made a very bad chancellor. For his timidous manner of creating and judging abundance of points some on one side and some on another, and, if possible, contriving that each should have a competent share made work for registers, solicitors and counsel who dressed up causes to fit his humour. Then came my Lord Shaftesbury, like the month of March, as they say, "in like a lion, and out like a lamb." For he swaggered and vapoured what asses he would make of all the counsel at the bar; but was soon reduced as is more fully declared in the Examen.¹ The Lord Nottingham, formerly attorney-general, came in and sat there a great many years. During his time the business, I cannot say the justice, of the court, flourished exceedingly. For he was a formalist and took pleasure in hearing and deciding; and gave way to all kinds of motions the counsel would offer; supposing that if he split the hair and with his gold scales determined reasonably on one side of the motion, justice was nicely done. Not imagining what torment the people endured who were drawn from the law and there tost in a blanket.

298. His lordship coming after and knowing how much the suitors endured by this flourishing of the court, and having no content in anything but the substance of justice and dispatch of the suitors, and ever accounting that unreasonable delays were the same in the mean as injustice was in the end; and that it often made the suitor quit his right rather than live upon the rack in pursuing it; bent his thoughts to compass a tolerable regulation of the court. It may be asked what came of all this? For surely somewhat considerable must be done by way of reform, when his lordship not only saw the necessity but had power to amend faults. As for that, I must inform that his lordship considered the nature of alterations; and that, when folks design very fairly to stop one hole, two or more shall spring in the room of it. So very hard it is to foresee events and to meet with the bad practices of

1681) became Keeper 9th November, 1673; and Sir Francis North succeeded 20th December, 1682.

¹ Page 45 *et seq.*

corrupt agents. He was resolved to make and publish a book of rules and orders for the direction of the officers, clerks, and solicitors in their practice, and for the advantage of the suitors in the best manner he could contrive. But he thought it not a right method, as some have done, at the very first to fall on with a volume of alterations before he had made some experiences in the court, and consulted the clerk and the bar, as he often did afterwards in public, to hear what they could allege for or against, anything he thought fit to propose to them, when the inconvenience to be removed was flagrant in court. And, accordingly, he sat and dispatched the business of the court, and, as occasion proffered, he declared his mind and retrenched many superfluities or rather nuisances in the court. Another thing that made him decline falling so early upon a book of orders, was, that it would give so great alarm to the bar and officers, with the solicitors, as would make them confederate and demur, and, by making a tumult and disturbance, endeavour to hinder the doing anything of that kind which they would apprehend to be very prejudicial to their interests. Whereas, if the matters were presented in court on fit occasions which would offer themselves frequently, the work would almost do itself by degrees; which, all at once, would meet with great opposition. And after he had thus occasionally put in practice the chief of his intended regulations, and seen in some measure the consequences of them, he might, with more assurance and better satisfaction to himself and others, bring all together into a firm establishment by an ample settlement of the course in practice to be observed for the future.

299. And, pursuant to this proposition made to himself, he began first to rescind all motions for speeding and delaying the hearing of causes beside the ordinary rule of court. And this lopped off a limb of the motion practice. I have heard Sir John Churchill, a famous chancery practiser, say, that in his walk from Lincoln's-Inn down to the Temple-hall, where, in the Lord Keeper Bridgman's time causes and motions out of term were heard, he had taken £28 with breviate, only for motions and defences for hastening and retarding hearings. His lordship said, that the

rule of the court allowed time enough for any one to proceed or defend ; and if, for special reasons, he should give way to orders for timing matters it would let in a deluge of vexatious pretences : which, true or false, being asserted by the counsel with equal assurance distracted the court and confounded the suitors. He used to commend the common law for the preciseness of its rules. There men knew their times to plead, to give notices, to enter judgments, &c. and he would have the like done in the chancery. "Therefore," said he, "look to your hits: you know the course and the time; do accordingly, and you shall have the benefit and not be hastened or delayed."

300. Then he found very great mischief by errors in masters' reports, which, shown to him, had been set right: but the parties craftily let the report go and depended to bring it back by exceptions, and so torment the court with abundance of frivolous matters for experiment, and come off at last with such a slip which carries the costs and is an immane vexation to the parties. His lordship ordered that each party should have a copy of the report before it was delivered out signed: to the end they might, if there were cause, show the master any gross mistakes: for such often happened by inadvertence and were made a foundation, by way of trick, to lodge exceptions upon and secure costs. But I am apt to think that, if his lordship had stayed much longer in the court, that order would have received very great alteration; for, with all the good intended and manifestly appearing in the front of it, yet, in practice, it turned to delay and vexation, as bad if not worse than before. For it introduced two reports instead of one and multiple attendances. For the vexatious side baffled before the master, as long as he could, upon trifles, keeping back the true points; and then, after the report was drawn and copies delivered out, there come in the exceptions in writing, and the cause before the master was but beginning. And these exceptions before the master, were added in the cause: and it is become almost of course to prefer them; as if exceptions to the court had not been vexation and delay enough.

301. He was a professed adversary to all attempts for stopping the course of the common law. I remember one

Barebones,¹ that was called doctor, a famous builder, that overtraded his stock about £1,000 per ann. and often wanted injunctions to stay suits at law, finding his designs that way now failing, said to me "that his lordship had not sat yet long enough to be a good chancery man:" for it is the foible of all judicatures to value their own justice and think, or at least pretend, that there is none so exquisite as their's; and, speaking of other courts, it is commonly with an air of contempt; while, at the bottom, it is the profits accruing that sanctify any court's authority. And, upon this account, the court of chancery had been very liberal in the matter of injunctions to stay suits at law. But his lordship thought fit to deny them in many cases where they used to go almost of course. As, for instance, upon exceptions filed to an answer; which used to be a bar to the motion for dissolving the injunction upon coming in of the answer; which injunction used to go of course, upon an attachment sued out, for want of an answer or *dedimus* issuing to take an answer in the country. But his lordship required the counsel that would continue the injunction, to show that the answer was insufficient in a material point. And the like was done in some other cases; I do not instance in all.

302. His lordship also set himself to stop the superfetation of orders. And they were a subject of his daily reprehension; for the causes came often to a hearing with a file of orders in the solicitor's bundle, as big as the common-prayer-book, for commissions, injunctions, publications, speedings, delayings, and other interlocutories; all dear ware to the client in every respect. But, in a few terms, his lordship reduced the quantities; for he was strict to the observance of his rules; and, for the most part, refused to make orders *nisi*, &c. as commonly was prayed when notice was not given of the motion; but held the solicitors strictly to their notices to be made appear by affidavits (and those to be filed) or they took nothing by their motion. Nor would he, without apparent equity demonstrated, grant anything to divert a cause out of its

¹ There is a very amusing account of this man in *Roger North's Autobiography*, § 76 *et seq.*

due course. And thus the tricking sort of practice, so much used in the court formerly, was greatly diminished. And the solicitors were fearful of using art; for, being taken napping, they never escape sharp reproof and the cause fared no whit the better for it, and their own credit suffered.

303. His lordship set his face also against the infinite delays by rehearings, re-references, and new trials; in all which cases he was so difficult that nothing but the plainest reason in the world or rather necessity, drew him to yield to grant them.

304. The last instance of his lordship's care of the suitors was to quicken the dispatch at the register's office, and (if possible) to break the neck of those wicked delays used there. This was the hardest matter to redress that belonged to the court. The register's is a patent office, and the poor men, the deputies, come into their employ upon very hard terms and the charge of presents and new year's gifts adds to the weight upon them; so as they are forced to bush about for ways and means to pay their rent and charges and gather an estate, as they think must be done, in a few years; wherein they are not wanting to use their best endeavour lest they suffer in the reputation of their skill. And, accordingly, scarce an order passeth without bribes for expedition in that quarter; and that is an article in the solicitor's bill as much of course as the fee for the order. His lordship used to chide them publicly, when justly complained of (and it could scarce be otherwise than justly) and also be very ready and easy to admit of complaints. And to prevent the colour they used for delay in cases decreed upon points nicely decided, and also to prevent motions for settling such orders, which often was done to jog the matter again, and see if the opinion of the court would alter, his lordship hath frequently ordered the register to attend him in the afternoon and take the ordering part penned by himself. And his lordship was desirous, for his own satisfaction in many cases, to do so; for if the reasons of his decree were special and such as came not under every cap, he cared not to leave the expression of them to the precipitate dispatch of a blundering register. At length the registers,

finding what was agreeable to his lordship's mind, and what kind of orders he was careful in pronouncing, thought fit of their own accord, in such cases, to attend his lordship with their penning and receive his lordship's sense and corrections; and he always took it well when they did so and was never uneasy to them. And the memorable register, Mr. Henry Devenish, was very well thought of by his lordship for his candid applications to him in that kind.

305. Here it will be proper to those who may say, since his lordship knew the diseases so well and had so much busied himself in the cure, why was time lost and no general regulation of the course and practise of the court made? To that I must answer with bitter laments for the shortness of his lordship's life which allowed but three years to his sitting upon that bench. He was naturally very quick of apprehension, but withal very deliberative, and would not only think long but consult persons to be concerned and confer with the skilful, and take the thoughts of his ordinary friends whenever he was to do any thing that had a long train of importances to follow; and being once satisfied within himself he was not wanting to strike decisively and effectually. And it is to me very certain, that if his lordship had sat in that court a year or two longer with tolerable quarter from the public, he had published a book of rules and orders which had gone a great way towards purging out the peccant humours of the court, at least so far as the lord keeper had it in his power to do: and it must be confessed that is something restricted as to the reformation of the offices; because equity is due to the officers as well as to others.

306. And, in all his designs he showed no disposition to retrench officers or the just profits of their places; but only that he would have them held strictly to their duty and not have it in their power to aid abuses for their peculiar profit; and to be subject to correction when either negligent or ignorant; and to make amends to the suitors who suffer thereby. Now most think that the offices themselves are the abuse and ought to be retrenched; for what signify the six clerks but to keep checks upon

numbers of sheets that they may reckon strictly with the under-clerks, and not be imposed on as to their dues by them? What signifies all the process between a *subpoena* and a sequestration and the officers that depend thereon, when the former is a summons and the latter a *distringas*, answerable to the common law? And the like in several instances. But I guess his lordship considered that there was a justice due as well to the crown, which had advantages growing by the disposition of places, profits by process of all sorts; as also the judges and their servants and counsel at the bar and solicitors, who were all in possession of their advantages, and by public encouragement to spend their youth to make them fit for them and had no other means, generally, to provide for themselves and their families: and had a right to their reasonable profits, if not strictly by law, yet through long connivance. And men not irregular or undeserving, ought to have, not only protection, but encouragement.

307. If any public order of men, or their employments, were mischievous to the public, it was for the parliament to remove them; and even they have always had a regard to the profits of officers and seldom do any thing to their prejudice; and it is pretended that such interests hinder regulations in parliament. But that need not be so; for the parliament can make them compensation but a judge hath no power or reason to alter the state of the offices under his judicature; but to reduce them to order and keep them up to reason and duty, is sufficient.

308. In all his model of regulation there was not the least ostentation or vanity, no formal inventions but a direct intention to follow the truth of things and to represent them pure and sincerely, with infinite caution that nothing he proposed as far as he could foresee might possibly turn to the prejudice of any person, at least not irretrievably; but that they might be as a fence or guard to rights, and to keep them from being oppressed by colour of law and the course of the court, as they call it.

309. He was no collector, as some may be who pretend to a great deal more than his lordship did; and sit, as at a receipt of custom, and, hearing divers people talk, from thence imbibe projects of the practice of which they know

little, but as they are insinuated (for the most part) insincerely by designing officers and others who project for their own private interest, and, under colour of the public good when nothing is less in their thoughts, suggest what makes for themselves. And sometimes they prevail with great men who do not plumb to the bottom nor discern the drift or consequence, to put forward authoritatively their contrivances by the name of regulations. But his lordship touched nothing but out of his personal observation and experience; and, being wonderful sagacious to understand the drift of all people in their business was capable to know from things and not from relation, what was amiss and how, probably, to amend them without introducing (as often happens) worse inconveniences. For he had seen acted to the life, all the dismal troubles men brought upon one another by delays and shifts in chancery causes, together with all the bad qualities of an unjust, beggarly, crafty suitor to the mortification of a poor client. I have often heard him mention a poor gentleman that had a very just cause, and was of himself very honest, but had not so much craft as his adversary, who, according to the forms and liberties given in the court and the offices of it, had snares laid for him which caught him; so that the counsel of his adversary, with their usual art, dressed him up in circumstances colourable as they set them out, and made him look as like a very knave as if he had been so in earnest. This was all surprise to him; and his own counsel was not instructed and ready enough to wipe him clean; and he, not having elocution to speak for himself, took the matter so to heart as that he went home and in a fit of sorrow died.

310. But to proceed: nothing sat heavier on his spirits than a great arrear of business when it happened; for he knew well that from thence there sprang up a trade in the register's office, called heraldry, that is, buying and selling precedence in the paper of causes than which there hath not been a greater abuse in the sight of the sun. If men are not forward the officers know how to make them come on and pay; for they will expressly postpone the unprofitable customers and so bring them to a sort of redemption. Therefore if the paper of causes is not well watched by

the court and the officers sometimes checked (for which, at best, there will be occasion enough) no man, without a vast expense, shall know surely when his cause will come on. And, as a poor treasury makes a rich treasurer, so this grievance is greatest, when the court itself wants dispatch. For the causes left one day, are remanets to the next, and so on to the next, that there are attendances enough on that account. But when, over night, a man sees his cause the first in the paper and, next morning, finds it at the bottom, his disappointment is great; and he will be told that without a touch of purchaseable heraldry, he will never be sure of his time. I have heard his lordship say that he never slept well if, in his paper over night, he found a great arrear of causes: so concerned was he lest he might not be able to dispatch them. And, according to this compassionate intention, he laboured continually to retrench superfluities as well in the modes of the bar practice as in the passing orders, and other office dispatches. By which means at length he got the mastery of the court; and his remanets (if any) were few and a moderate day often spent them: and then his heart was at ease. This continued till the parliament and (more unhappily) his own weakness came on and made him unable to continue that close application to the business of the court; and, for want of due time allowed for hearing of causes, the reins of the court grew loose and the paper became loaded with remanets, which to see was of itself to him a sickness. And I am confident it was one, and not the least ingredient, in bringing forward upon him that fatal distemper, which, after it had once seized, never left him till he died.

311. It was his lordship's manner when he sat in the court to hold in his hand the paper of causes; and if any thing moved in his thoughts considerable, either towards regulation of abuses, improving the forms and course of the court, or (in the hearing of causes) of nice reason and difficult to determine, he called for the register's pen and wrote it upon the day paper. He was much used to write upon his hand, and could do it very steadily; and, when he came home, he laid by the paper with others he had so wrote upon, that if he would form a more solemn

report of the case he had the hint easily to do it. But he might also have another end in it; for if (as was touched before) a decree was pronounced with exquisite terms and distinctions, his lordship did not always leave the drawing of the order to the register; for if he mistook the sense of the court, then certainly followed re-hearings or motions to settle the order; and sometimes the register himself, if he doubted, would come to his lordship to explain his sense to him. But his chief care of this kind was when the subject matter of the cause was touchy, and great men or great parties concerned themselves in it, and there might afterwards follow some calumny or complaint.

312. I shall not have occasion here to touch more at large any of the especial litigated causes which he decreed. As for the few which were publicly taken notice of and made the subject of news, and by certain vile writers traduced; amongst which are the case of Mr. Mayot's will, which is already fully related in the *Examen*; ¹ and the case of the Duke of Norfolk against his brother; they shall be fully accounted for afterwards. It is the practice of libellers to take, or make, any pretences for calumny; but if never so many things are done well there is no notice taken of them. And any historian that doth the one and not the other, is a partial tool and no better than a libeller. Therefore against the reflections falsely cast at the before-mentioned cases, I will subjoin one, wherein his lordship's conduct as well as decree may justly, and even in the measure of his adversaries (if it were not for his commendation) be accounted beyond the ordinary, even to a pitch of heroical justice. And it was in 1684, 1 Ja. II. between Fitton and my Lord Macclesfield, ² formerly Gerrard. The cause was first decreed twenty-two years before; and now came to be heard before his lordship upon a bill of review to reverse the old decree. Mr. Fitton had lived very poor, and mostly in prison, ever since the decree, which had undone him. He was a

¹ *Examen*, p. 557; and see *Kennet*, vol. iii. p. 421.

² [This case is already related in the *Examen*; but as I find some more circumstances, of a pretty extraordinary nature, added to this account of it, I thought proper to insert it in this life.] *Note by the author.*

notable, busy, soliciting man, and a papist; and that was a character of notable recommendation in the court of King James II.¹ Upon this account Fitton had wormed himself into much favour; for the opinion they had entertained of his ability and industry was extraordinary: and on the other side the Earl of Macclesfield was stiff of the anti-court party. Fitton thought that, by virtue of his advantage in this reign, if he brought his cause about again he should get the better of his adversary. Accordingly he went to work; and there being nothing in the cause but the errors assigned in his bill of review, it soon came into the paper to be heard; and that was the time to ply his fare at court to get an interest so strong as might secure my lord keeper, and then the work was done: and accordingly the king himself was so far overseen as to speak to his lordship for Fitton; which he did upon the usual topic "of giving a favourable and patient hearing; and, in the main recommended the cause to his justice." But all the lords, of that interest, and some others of most potent influence at that time, applied to his lordship more directly for his favour as to a poor oppressed man. I believe his lordship was never so besieged in all his life; and I believe it irritated his spirits so much that, if he would have been partial, it had been for the other side. But the cause came on and the counsel strong on both sides. The earl himself was in court without any company of his own. He, knowing the state of affairs, concluded his cause at this time lost, and depended upon some after-game to retrieve it. But there might be observed about the court enough of the opposite party. His lordship took himself to be upon the tenters of his behaviour; and, for that reason, determined to let the counsel on both sides have their full swing; and, however importunate, not to correct them for anything but only to hold them close to the points and then to let them talk their fill. I must confess that, being present at the hearing and observing so much impertinency and some inde-

¹ Fitton was afterwards made Lord Chancellor of Ireland, in the place of Sir Charles Porter, though he had been twice convicted of forgery. See *Rose's Observations on Fox*, p. 94. *Kennet*, vol. iii. p. 500; and see the *Examen*, p. 558.

cencies of counsel and no reproof at all from the court, as useth to be in such cases, I wondered at the different method. For he sat still and sometimes asked if they had all done or if they had any thing more to say? Which often drew on more talk though no other than repetition; all which, contrary to custom, he bore, till all said they had done and had no more to say. It may not fall under every one's observation, that counsel at the bar will ever leave a cause when it is some way hinted to them that the court is inclinable on their side; for judges, that have a bias, will seem to bear hard against the side they intend to determine for, and at last come round off; the meaning of which is obvious. In this case, his lordship coming to his decree, took notice that there was somewhat very extraordinary that made this cause to be brought on now before him, when so many worthy and learned judges had sat in his place during the intervening time since the first decree, and he could not conceive what could be expected from him more or otherwise than from any of them. But since he was chosen out to determine this cause, he would do it according to the best of his judgment and conscience and so dismissed the bill. He said he would not declare what he might have done if the cause had come before him when recent, or in a decent time after the first decree when fact of forgery (as was in the case) might reasonably be examined; but after great length of time, and since the parties having had full liberty allowed them to proceed in due time had done nothing, they had slipped their opportunity. And now, after so many chancellors and sessions of parliament let pass, to come at last to him that had no reason to value himself against those great authorities, he thought he could not and therefore would not alter the decree. When this was done, the Earl of Macclesfield who little expected his ease so soon, for he had always joined with his lordship's enemies (which supposed prejudice in a judge many think hath not a good influence upon a man's cause) went out of the court down into the hall and walked gravely and silently to a bookseller's shop, and asked for his lordship's picture (then newly printed and sold) and, having paid down his shilling, rolled it up, and, without saying a word to any body, went away.

Whether he was ever the more or less friend or enemy to his lordship after this I know not. But it is sure enough that the Roman Catholic party took umbrage from this judicial sentence, among other actions of his lordship, to conclude he was inflexible to any purposes of theirs; and it confirmed a resolution, taken by the busy part of them, to heave him out of the way before any of their critical designs were, or well could be, brought forward.

313. And now I proceed to the other beforementioned remarkable case decreed by his lordship; but it ended not so. And it was this. The point was of a term of two thousand years, whether it may be entailed or not; but it did not turn upon the common law, for there it is clear *not*, but proved to be a right in equity being a trust. If this entail stood, Esme Howard, a brother of the Duke of Norfolk, had the equitable right; if not, then the Duke himself. And he was a Protestant but the other a Papist; and it will appear what influence that had. The Earl of Nottingham heard the original cause and called to his assistance the three chiefs, Pemberton of the King's Bench, his lordship of the Common Pleas, and Mountagu of the Exchequer. And, after the hearing, the Lord Nottingham desired their opinions which were clearly that the trust ought to follow the law. When they had done, the chancellor did not show them the respect of debating any of their reasons in the least; but, in a formal and seemingly prepared speech, decreed the direct contrary. When his lordship had the seal and sat there, the cause, upon a rehearing or review, came again to be heard before him; and he, knowing no rule but his judgment of the law and conscience in equity, reversed the decree.¹ Afterwards Esme Howard preferred an appeal to the House of Lords. It seems Sir George Jeffries was then chief justice of the King's Bench; and he by means of some encouragement he had met with took upon him the part of slighting and insulting his lordship on all occasions that proffered. And here he had a rare opportunity; for in his rude way of talking, and others of a party after him, he battered the poor decree, not with-

¹ This case is reported in 3 Chan. Ca. 1, and Pollexfen, 223. See the observations upon it in Mr. Fearne's *Essay on Contingent Remainders*, p. 469.

out the most indecent affronts to his lordship that in such an assembly ever were heard. His lordship whose part it was to justify his decree, took not the least notice of any indecency or reflection that regarded him, but made a deduction of the case and gave his reasons amply and with calm and exquisite temper. But his decree was reversed. I heard a noble peer say, that "he never saw his lordship in so much lustre as he appeared under the ill usage of that day;"—and he was more admired than any success of his reasons could have made him. But now having opened this scene we are not to expect other than opposition, contempt, and brutal ill usage of that chief towards his lordship while he lived. The Earl of Nottingham's was printed, but his lordship did not think fit to interest himself in a private cause so far as to become a party in print, although all the chancellor's flourishes were fully answered and resolved. And as for certain scandals and lies, raised and printed by a foul libeller¹ relating to this cause, I do not think them worth taking notice of.

314. But as to Sir George Jeffries, having said so much of his ill usage of his lordship, I think it proper to give some particular account of his character; which I shall for the most part do by annexing some short explanation to his lordship's own notes of him: and those are more explicit of him than of any other person; for all the other men of law in England, in place and out of place, mustered together, did not so much affect his lordship's quiet as the behaviour of that chief did; of which a just view is presented elsewhere. To take him from his beginning, he was a gentleman's son in Wales of whom it was reported that he used to say George (his son) "would die in his shoes." His beginnings at the inns of court and practice, were low. After he was called to the bar, he used to sit in coffee-houses and order his man to come and tell him that company attended him at his chamber; at which he would huff, and say, "Let them stay a little; I will come presently."

¹ This scandal, to which allusion is made in the text, is the following passage, at the conclusion of the memoir of the Lord Keeper in the *Lives of the Chancellors*, vol. i. p. 178. "There was an old story of a chancery suit, between the Duke of N—— and Sir P—— H—— in his time, and of some gold plate in a box, but it looks too invidious to relate it."

This made a show of business; of which he had need enough, being married, and having several children. One of the aldermen of the city was of his name; which, probably, inclined him to steer his course that way: where, having got acquaintance with the city attorneys and drinking desperately with them, he came into full business amongst them and was chosen recorder of the city. That let him into knowledge at court, and he was entertained as the Duke of York's solicitor and was also of the king's counsel. He continued recorder till the prosecution of abhorrrers, and saved himself (as he took it) by composition for his place. Thereupon, having surrendered his recordership, he obtained the place of chief justice of the King's Bench; and, after the death of the Lord Keeper Guilford, the great seal; which he held till the Prince of Orange landed; and then he absconded in disguise in order to fly beyond sea; but, being discovered at Wapping, escaped narrowly being torn in pieces by the rabble. He was secured by the lord mayor and sent to the Tower, where he died. The incidents of his life which I shall take occasion to remember, may aptly be placed against his lordship's notes concerning him.

315. "Began with a turbulent spirit against the mayor and court of aldermen, taking part with the commons."

This method was the direct contrary to what raised him, and in his following behaviour he practised: for he became a high flier for the authority of the mayor and the court of aldermen. He was of a fierce, unquiet disposition, and, being at first but low himself, could act only among inferiors whom he instigated to be troublesome; and, like others of ambitious tempers, or, which is nearly the same, necessitous, he put himself into all companies; for which he was qualified, by using himself to drink hard; and so made himself a general acquaintance and some friendships, in the city. And upon this course originally taken he grounded his pretensions to an interest in the citizens.

316. "Then, being acquainted with Will. Chiffinch (the trusty page of the back stairs) struck in and was made recorder."

This Mr. Chiffinch¹ was a true secretary as well as page;

¹ The name of Chiffinch occurs perpetually in the secret history of this

for he had a lodging at the back stairs, which might have been properly termed the spy-office; where the king spoke with particular persons about intrigues of all kinds: and all little informers, projectors, &c. were carried to Chiffinch's lodging. He was a most impetuous drinker and, in that capacity, an admirable spy; for he let none part from him sober if it were possible to get them drunk; and his great artifice was pushing idolatrous healths of his good master, and being always in haste; "for the king is coming;" which was his word. Nor, to make sure work, would he scruple to put his master's salutiferous drops (which were called the king's, of the nature of Goddard's) into the glasses; and being an Hercules well-breathed at the sport himself, he commonly had the better; and so fished out many secrets and discovered men's characters, which the king could never have obtained the knowledge of by any other means. It is likely that Jeffries, being a pretender to main feats with the citizens, might forward himself and be entertained by Will. Chiffinch, and that which at first was mere spying turn to acquaintance, if not friendship, such as is apt to grow up between immane drinkers; and from thence might spring recommendations of him to the king, as the most useful man that could be found to serve his majesty in London; where was need enough of good magistrates and such as would not be, as divers were accounted, no better than traitors.

317. "Afterwards the duke's solicitor."

reign. He was the confidant of Charles, not only in his amours but also in his political intrigues. The first pension from the court of France was paid into Chiffinch's hands; "his ministers knew nothing of it, only Mr. Chiffins, his valet de chambre and confidant, to whose lodgings the money was carried and with whom I went to the merchants' houses to receive it. (See the *Memorial of Blancard*, *Dalrym. App.* p. 117; see also the *Duke of Leeds' Letters*, pp. 9, 17, 33.) The secret council which was established in the next reign, by the advice of Sunderland, used to meet in Chiffinch's apartments. (*Life of James II.*, vol. ii., p. 74.) He is called by Evelyn, "Closet-keeper to the King." (*Memoirs*, vol. i., p. 330.) It was in Chiffinch's lodgings that the interview between James II. and the Duke of Monmouth took place, when James, with cold-hearted brutality, suffered his brother's son to beg his life in vain. (See *Lord Lonsdale's Memoir*, p. 11.) Chiffinch was the person employed to introduce the Catholic priest into the king's chamber, when Charles II. was dying. (*Barillon's Letters*.)

Having once got a footing in court and found means to hold forth great assurances of future services at large, it is no wonder that he was taken in on that side of the court that desired such men as would act without reserve, as it was termed. While he was in this post he made a great bustle in the duke's affairs, and carried through a cause which was of very great consequence to his revenue ; which was for the right of the penny post-office. It was the invention of one Docwra, who put it into complete order and used it to the satisfaction of all London for a considerable time. The Duke of York was grantee of the revenue of the post-office ; and his counsel, finding this project of a penny post turn out so well and apparently improvable, upon consulting the act, thought the duke had a right to all posts and consequently to that. Thereupon an information, grounded on the post act, was exhibited against Docwra,¹ and, upon a trial at the King's Bench bar, he was convicted ; and ever since the crown hath had the benefit of the penny post. Docwra would not submit himself but insisted on his right to the last ; otherwise it was thought he might have secured to himself a good office, by being commissioner for life to manage that revenue. But his waywardness to the court would not give him leave to be so wise.

318. "Upon troubles in Parliament he would not stand his ground, but quitted his recordership in fear and with great entreaty.² Whereupon Sir George Treby was made."

This whole affair and all the circumstances of it is fully accounted for in the *Examen*, so shall say little here ; only that this Sir George Treby, who succeeded Jeffries in the recordership, was no fanatic ; but, of the fanatic party, as true as steel. His genius lay to free-thinking and, conformably to his fellows at that time, made the scriptures and christianity, or rather all religion, a jest ; and so constant

¹ See Docwray's case, *Skinner's Reports*, 80.

² He was attacked in Parliament as one of the *abhorrrers*, and was reprimanded at the bar on his knees ; upon which "the ever-facetious king was pleased to laugh and say, 'that Sir George Jeffries was not parliament-proof.'" (*Examen*, p. 550.)

in his way that no man could say that ever he was the first, and not the last, that left the bottle.¹

319. "He aimed at the place of Chief Justice of the Common Pleas after the judgment in the *quo warranto*, settled to the prejudice of Jones, who had served in giving it; and expedient being found by room in B. R. was made so."

It was a cruel thing in Jeffries to press so very hard as he did to come over the head of Mr. Justice Jones, against whom there was no sort of objection; but on the contrary a merit in doing the king justice, in so great and consequential a cause as that against the city was. And, in the end, Saunders the chief justice being disabled by his apoplexy, Jones pronounced that judgment and expressed the reasons so short and sound, and delivered with that gravity and authority as became the court, and greatness of the occasion. And one that had a grain of consideration of any thing but himself and being of the same interest and sentiment, would not have pushed, with a flaming violence at court, to the injury of so venerable a person as that judge was; whose character I should have particularly set forth here if it had not been done already in the *Examen*.² Jeffries did not gain his point of him; but matters rested awhile, and the place of chief justice of the Commons Pleas being void by his lordship's promotion to the seal, Jones was placed there which was his advantage, and Jeffries took the cushion in the King's Bench. This was not the only instance of the unreasonable ambition of Jeffries, to the prejudice of deserving men. For he laid his eye on the place of Chief Justice of Chester which was full of Sir Job Charleton, than whom there was not a person better qualified for his majesty's favour; an old cavalier, loyal, learned, grave, and wise. He had a considerable estate towards Wales and desired to die in that employment. But Jeffries,

¹ "He was," says Evelyn, "a learned man in his profession, of which we have now few, never fewer." (*Memoirs*, vol. ii. p. 73.) Treby was one of the counsel for the City in the great case of the *quo warranto*, and was subsequently deprived of the office of Recorder in 1685, but was restored by William III. in 1688. He was appointed Attorney-General May 7, 1689, and Chief Justice of the Common Pleas 13th April, 1692. *Ob.* 1701.

² *Examen*, p. 563

with his interest on the side of the Duke of York, pressed the king so hard that he could not stand it; but Sir Job Charleton must be a judge of the Common Pleas, and Jeffries¹ at Chester in his place, being more Welshman than himself. Sir Job laid this heavily upon his heart and desired only that he might speak to the king and receive his pleasure from his own mouth; but was diverted as a thing determined. But once he went to Whitehall and placed himself where the king, returning from his walk in St. James's park, must pass; and there he set him down like hermit poor. When the king came in and saw him at a distance, sitting where he was to pass, concluded he intended to speak with him, which he could not by any means bear: he therefore turned short off and went another way. Sir Job seeing that, pitied his poor master, and never thought of troubling him more but buckled to his business in the Common Pleas.² And may Westminster-hall never know a worse judge than he was.

320. "Then received a ring³ from the king before the circuit to blow his fame as favourite, and *quo warranto's*

¹ Mr. Booth, afterwards Earl of Warrington, has thus described the conduct of Jeffries, while he filled the place of Chief Justice of Chester. "But I cannot be silent as to our Chief Judge, and I will name him, because what I have to say will appear more probable. His name is Sir G. Jeffries, who, I must say, behaved himself more like a Jack-pudding, than with that gravity that beseems a judge. He was mighty witty upon the prisoners at the bar. He was very full of his jokes upon people that came to give evidence, not suffering them to declare what they had to say in their own way and method, but would interrupt them because they behaved with more gravity than he. But I do not insist upon this nor upon the late hours he kept in our city. It is said he was every night drinking until two o'clock or beyond that time, and that he went to his chamber drunk; but this I have only by common fame for I was not in his company: I bless God I am not a man of his principles or behaviour; but in the mornings he appeared with the symptoms of a man that over-night had taken a large cup." (*Chandler's Debates*, vol. ii. p. 163.)

² Sir Job had the virtue to resist the court in the great question of the dispensing power, and was displaced on that occasion. (*Heywood's Vindication*, Appendix, p. xx.)

³ "The king was persuaded to present him with a ring, publicly taken from his own finger, in token of his majesty's acceptance of his most eminent services, and this by way of precursor, which being blazoned in the Gazette, his lordship went down into the country, as from the king *legatus a latere*." (*Examen*, p. 626.) Burnet tells us,

sent to terrify, and the charters falling to him was lustily cried up as a service, which was all laid beforehand."

What concerns this artificial fame and the use that was made of it in favour of recusants as also the consequence of merit for procuring surrenders of charters, is expressed among the emergencies during his lordship's ministry, in this fourth stage of his life. And as for the matter of charters, a business of great remark in those times and not like to be well understood in the future, I have endeavoured to state what I know of those proceedings by *quo warranto* and procuring surrenders, in the Examen.¹ I think it will appear there that the original and chief instances of them were not only just,² that is according to law and prudent, but also necessary to the continuance of the public peace; and also that this method of law so reasonably begun and justly pursued, after a few years corrupted into a course of violence and oppression; that is when men interposed either to court or fright harmless and orderly corporations to surrender and, upon refusal, plunged them into the chargeable and defenceless condition of going to law against the crown, whereby that which would not come by fair means was extorted by violence. This was one of the troubles of mind which his lordship laboured under in the latter end of King Charles's reign, as of a devil raised, which could not readily be laid. Nor could he resist the pretenders to merit; since all was reckoned good service at court that gave the king any addition of power, without considering the defalcations on the

that this ring, which was presented to Jeffries immediately after the execution of Sir T. Armstrong, was called his *blood-stone*.

¹ P. 624, *et seq.*; and see the proceedings in the *quo warranto* against the city of London, in *Howell's State Trials*, vol. viii. p. 1039.

² See one of these instances in *Sir John Reresby's Memoirs* (p. 170). "The king had now conceived a displeasure against the city of York, and coming from the Duchess of Portsmouth's, he asked me, leaning upon my arm, 'If I knew sufficient matter for bringing a *quo warranto* against their charter?' I told his majesty 'I did not, but would endeavour to inform myself; but I feared I could not so well do it at such a distance, as if I was upon the spot.' To which his majesty replied, 'I only recommend it to you.' *The Lord Mayor, it seems, had refused to let a mountebank erect his stage in that city, though he was furnished with the king's recommendation, which the man complaining of, his majesty thought himself thereby slighted or injured.*"

other side from the fierce and irregular means of obtaining it. And his lordship was not wanting to discountenance all such practices, which made him be listed among the trimmers as touched elsewhere. However there were hopes in that reign of bringing all to rights again. But, after the death of that good king, the flood-gates were opened and a deluge of abuse upon that topic entered, but came not up so high as to overwhelm all till his lordship died, who as long as he lived was some obstacle to the course of those many inconveniences that followed. But then, among many others, this trade of charters ran to excess and turned to an avowed practice of garbling corporations in order to carry elections to the parliament; and a committee of council was appointed to manage the regulations, as they were called; and there was an itinerant crew of the worst of men, that wrought in the towns to be regulated under direction of the committee.¹ These were termed regulators; and according to their characters and designations, mayors, aldermen, recorders, common councils and freemen, were modified and established. The Lord Chief Justice Jeffries was capitally concerned in the first of these exorbitances, and pushed matters through all the degrees into those excesses I mentioned. At first it was his way of making court but at last it was his shield and defence. For he and his clan, one Sir N. Butler and (I should have first said) the Lord Sunderland were, by these practices, become so obnoxious in the reign of King James II. that, knowing they could not stand the fury of any parliament, they laboured by manifest provocations

¹ See Evelyn's account of these elections (*Memoirs*, vol. i. p. 561): "There were many of the new members, whose elections and returns were universally censured; many of them being persons of no condition or interest in the nation, or places for which they served, especially in Devon, Cornwall, Norfolk, &c., said to have been recommended by the court, and from the effect of the new charters changing the electors. It was reported, that Lord Bath carried down with him into Cornwall no fewer than fifteen charters, so that some called him the Prince Elector." The Earl of Bath put the names of various officers of the guards into almost all the charters of Cornwall. (*Burnet's Own Time*, vol. iii. p. 1072.) See *Sir J. Reresby's Memoirs* (p. 269-275), as to the corporation of York. Roger Coke has accused the lord keeper of corruptly receiving bribes in the matter of these charters, but the charge seems to be made without sufficient grounds. (*Coke's Detection*, vol. ii. p. 386.)

of the people, carried on affectedly by them, at length to come to that height as to be able to show the king that all parliaments were impracticable, and to prevail upon him to live without any at all. And by that means they might continue great, and be secure; otherwise, that is, if ever there was a parliament they must certainly fall a sacrifice to the fury of the commons. But these extremes aspersed the whole subject-matter, as well what was just as unjust, reasonable as unreasonable, all alike suffered under the obloquy; and none ever concerned themselves to distinguish more than if there had been no difference at all from the first to the last. And the very law itself, that is, the known legal and (sometimes) necessary process of *quo warranto* came well nigh to be entirely abolished. For so men run from one extreme to another and, as the English mode is, reform, not by restoring or mending, but by kicking down all at once whatever is abused, though in itself never so good. This is what I have thought fit to say here touching the subject of charters; which doth but very little if at all interfere with so much as is said of it in the Examen.

321. "The companies and city business make him great, being put into his hands; and then he is cried up as having the city at his devotion.

"Qu. *Quid proinde?*" (Qu. What then?)

This consequence is elsewhere observed of him. Only it is to be noted that he prevailed to have all the affairs concerning the city of London put into his hands; which made many citizens obliged to court him that were not very much really his humble servants: but no remedy; and he was their grandee.

322. "Sir William Smith and Baili justices. *Inde ardor cum intemperie.*" (Thence he took occasion to scold violently.)

This is mentioned elsewhere so far as I can remember of it; as also the speaking in the council drunk, and inveighing against trimmers.

323. "*Post, accusatio com. serjeant, sine fundamento.*" (He afterwards accused the common serjeant upon no grounds.)

One Mr. Crisp was in those times the common serjeant

in London, an office of considerable account especially in the orphanage. He was an honest, reasonable gentleman, and very loyal; but it seems was not one that would go into all measures; therefore causeless blame was laid upon him. I do not call to mind what it was; but it did not succeed to his prejudice.

324. "*Post Rosewell, mo' in arrest, et gavisus de errore.*" (Urged the prosecution of Rosewell, and laughed at the mistake.)

This Rosewell was attaint, by verdict, of high treason in London, and having made his peace with the lord chief justice moved by his counsel to arrest the judgment for an error of form in the record. The lord chief justice could not contain himself or be concealed, but openly rejoiced at the accident and was tickled with mirth and laughing at the king's counsel. But the serious observation was, that after he had urged the prosecution of Rosewell and a fault slipped, he should so merrily discharge him.¹

325. "Acquittal of Hays."

This was a citizen that he caused to be prosecuted for high treason; and then, at the trial, apparently helped him off with the jury: which, it may be, was not without reason; for evidences at such trials ought to be above all exception. But since nothing new sprang at the trial which was not seen before it was pleasant to see a man hunted into the toils, and then let go. So suddenly may enemies become friends. Upon what terms who knows?²

326. "Motion for delivering the papists out of jail."

This is at large declared afterwards.

327. "Prosecution of Will. Williams."³

This his lordship thought ill advised; for he was speaker of the House of Commons and had signed divers

¹ See report of Rosewell's Trial, *Howell's State Trials*, vol. x. p. 147; and Burnet's account of the transaction, *Own Time*, vol. ii. p. 1028. Burnet says, that "the court was so ashamed of the witnesses, that the attorney-general had orders to yield to the arrest of judgment."

² See the report of Hays's trial, *Howell's State Trials*, vol. x. p. 307.

³ Sir William Williams, the ancestor of the present Sir Watkin Williams Wynne, was returned as member for Chester in 1678 and appointed speaker of the House of Commons, an honour which was again conferred upon him in 1681. Having voted for the bill of exclusion, and rendered himself in other respects obnoxious, he was prose-

matters, as commitments, addresses, votes, and such acts as the house thought fit should be done; but if they were, as was supposed, criminal in their nature, as libels, false imprisonments, &c. no privilege, in strict rigour of law, excuseth them. But to prosecute a speaker in vacation of parliament for what he had done by the order of the House of Commons in the last sessions of parliament, was by no means gracious or like to be well taken in any succeeding parliament, but tended rather to irritate than reconcile; which was more for the king's service. But Williams had been sharp upon Jeffries when he was upon his knees at the bar of the house for abhorring; and they were both Welshmen: therefore Williams must be prosecuted.

328. It may conduce somewhat to the understanding this to relate what I clearly remember. It was the case of Samuel Verdon, a famous Norfolk attorney. He was ordered by the House of Commons to be taken into custody and the warrant signed William Williams. The serjeant's men went down and took him; but he out of an acquired obstinacy would conform with the messengers in nothing. But in bringing him up, he would not be prevailed with either to mount or dismount his horse; but forced the messengers at every turn, to lift him on and off; and, at the same time, had his clerks taking notes in order to testify these assaults of his person; for every one of which he intended to bring an action of battery. It so fell out that, as he was upon the road, about midway between Norwich and London, the parliament was prorogued, by which the warrant ceased, and after that the custody was a false imprisonment; and Verdon brought his action for it against the messengers, which action was tried at the Exchequer bar.¹ The speaker (William Williams) him-

cut, at the instigation of the Duke of York, and fined £10,000. Finding his country politics thus inconvenient, he abandoned them, and adopted those of the court, and was appointed solicitor general, by James II. To him was confided the management of the great trial of the seven bishops, *Ob.* July 10, 1700. Burnet calls him "a corrupt and vicious man, who had no principles, but followed his own interests."

¹ The action appears from *Shower's Reports* (vol. ii. p. 300) to have been brought in the King's Bench.

self was the front counsel for the defendants, and Jeffries for Verdon. Williams said much to excuse the men, upon account of their invincible ignorance of the prorogation. Upon that, Verdon steps forth, and, "My lord," said he, "if Sir William Williams will here own his hand to the warrant, I will straight discharge these men." Jeffries was so highly pleased with this gasconade of his client that he loved him ever after; of which Verdon felt the good effects when his learned counsel came that circuit as chief justice; for although many complaints were intended against him, and such as were thought well enough grounded, yet he came off scot free.

329. "East India Company."

This was the great cause that depended, at that time, against Sands for interloping: but concerned the merchants in London who complained against the East India Company for being a monopoly, and began almost to form an interloping company. But the judgment of law being for the company, put a stop to it. Jeffries espoused the matter with great fury; and though not much given to argue law matters, he, in giving his judgment, made a prolix argument as the reports of the case wherever they appear will show.¹ There was somewhat extraordinary at the bottom. But I have no ground to say what.

330. "Henry Pollexfen introduced."

There is no account to be given of this action of Jeffries but that he was making friends with the anti-court party. For this Pollexfen was deep in all the desperate designs against the crown. He was the adviser and advocate of all those who were afterwards found traitors. In a word, a thoroughstitch enemy to the crown and monarchy in his time. A fanatic and (in the country) frequenter of conventicles; and one more notorious of this character was not to be found. And yet when Jeffries went down into the West, with his commission of war as well as oyer and terminer, he takes this Pollexfen into the service to be the king's counsel in those furious prosecutions. And it may be he knew him prophetically to be fit for the purpose;

¹ In the *State Trials* the arguments of Jeffries and the other judges are given at great length (vol. x. p. 371).

for upon the revolution he was made a judge, and, from a whiner for favour to criminals, he proved the veriest butcher of a judge that hath been known. But to pass to the chief justice. It seems here that this service was to be a step upon which Jeffries intended to lift him into the king's service, as his majesty's counsel or serjeant if not judge. Nothing could be more counter to the hectoring humour of the chief justice, that used to batter whigs and even trimmers without mercy, than this employment of Pollexfen.

331. There is one branch of that chief's expedition in the West, which is his visitation of the city of Bristol, that hath some singularities of a nature so strange that I think them worth my time to relate. There had been an usage among the aldermen and justices of the city (where all persons, even common shop-keepers, more or less trade to the American plantations) to carry over criminals who were pardoned with condition of transportation, and to sell them for money. This was found to be a good trade; but, not being content to take such felons as were convict at their assizes and sessions, which produced but a few, they found out a shorter way which yielded a greater plenty of the commodity. And that was this. The mayor and justices, or some of them, usually met at their tolsey (a court-house by their exchequer) about noon, which was the meeting of the merchants as at the Exchange at London; and there they sat and did justice-business that was brought before them. When small rogues and pilferers were taken and brought there, and, upon examination, put under the terror of being hanged, in order to which mittimus's were making, some of the diligent officers attending instructed them to pray transportation, as the only way to save them; and for the most part, they did so. Then no more was done; but the next alderman in course took one and another, as their turns came, sometimes quarrelling whose the last was, and sent them over and sold them.¹ This trade had been

¹ The merchants appear not to have confined themselves to kidnapping rogues and vagabonds.—Narcissus Luttrell tells us that an order in council was made “against merchants spiriting or kidnapping away *young children*; and directing them how to proceed in future in taking

driven for many years and no notice taken of it. Some of the wealthier aldermen although they sat in the court and connived, as Sir Robert Cann¹ for instance, never had a man; but yet they were all involved in the guilt when the charge came over them. It appears not how this outrageous practice came to the knowledge of the lord chief justice; but, when he had hold of the end he made thoroughstitch work with them; for he delighted in such fair opportunities to rant. He came to the city and told some that he had brought a broom to sweep them. The city of Bristol is a proud body and their head, the mayor, in the assize commission is put before the judge of assize; though perhaps it was not so in this extraordinary commission of oyer and terminer. But for certain, when his lordship came upon the bench and examined this matter, he found all the aldermen and justices concerned in this kidnapping trade, more or less, and the mayor himself as bad as any. He thereupon turns to the mayor, accoutred with his scarlet and furs, and gave him all the ill names that scolding eloquence could supply; and so with rating and staring, as his way was, never left till he made him quit the bench and go down to the criminal's post at the bar; and there he pleaded for himself, as a common rogue or thief must have done: and when the mayor hesitated a little or slackened his pace, he bawled at him and stamping called for his guards; for he was general by commission. Thus the citizens saw their scarlet chief magistrate at the bar, to their infinite terror and amazement. He then took security of them to answer informations, and so left them to ponder their cases amongst themselves. At London Sir Robert Cann applied by friends to appease him, and to get from under the prosecution, and at last he granted it, saying, "Go thy way; sin no more lest a worse thing come unto thee." The prosecutions depended till the

any persons they send beyond seas." (*State Trials*, vol. x. p. 33.) Wilmore, the foreman of the jury which ignored the bill for treason against Lord Shaftesbury, was, according to Roger North, accused of being a kidnapper, and of having sent one or two young men to the Plantations, and was compelled to fly. (*Examen*, p. 591.)

¹ See more concerning Sir Robert Cann, in the *Life of Sir Dudley North*, who married his daughter.

revolution which made an amnesty ; and the fright only, which was no small one, was all the punishment these juridical kidnappers underwent ; and the gains acquired by so wicked a trade rested peacefully in their pockets.

332. " Sir John Trevor."

He was a countryman of the lord chief justice Jeffries¹ and his favourite. It may not be amiss to show a little of him, that it may appear what sort of men that chief brought forward. He was bred a sort of clerk in old Arthur Trevor's chamber, an eminent and worthy professor of the law in the Inner Temple. A gentleman that visited Mr. Arthur Trevor at his going out, observed a strange-looking boy in his clerk's seat (for no person ever had a worse sort of squint than he had), and asked who that youth was ? " A kinsman of mine," said Arthur Trevor, " that I have allowed to sit here to learn the knavish part of the law." This John Trevor grew up and took in with the gamesters, among whom he was a great proficient : and being well grounded in the law proved a critic in resolving gaming cases and doubts, and had the authority of a judge amongst them ; and his sentence for the most part carried the cause. From this exercise he was recommended by Jeffries to be of the king's counsel, and then master of the rolls, and, like a true gamester, he fell to the good work of supplanting his patron and friend : and had certainly done it if King James's affairs had stood right up much longer ; for he was advanced so far with him as to vilify and scold with him publicly in Whitehall. He was chosen speaker in King James's parliament and served in the same post after the revolution. Once, upon a scrutiny of bribery in the House of Commons, in favour of one Cook, a creature of Sir Josiah Child's who ruled the East India Company, it was plainly discovered that the speaker Trevor had £1,000, upon which the debate ran hard upon him, and he sat above six hours as prolocutor in an assembly that passed that time with calling him all to nought to his face ; and at length he was forced or yielded, to put the question upon himself, as in the

¹ He was a cousin of Jeffries.

form, "As many as are of opinion that Sir John Trevor is guilty of corrupt bribery by receiving," &c. and, in declaring the sense of the house, declared himself guilty. The house rose and he went his way and came there no more. But whether the members thought that the being so baited in the chair was punishment enough, or for his taking such gross correction so patiently and conformably; or else a matter once out of the way was thought of no more; it is certain that he never was molested farther about that matter;¹ but continued in his post of master of the rolls, equitable judge of the subjects, interests, and estates, to the great encouragement of prudent bribery for ever after.

333. "About bailing of the lords. His deliberating, resolution, and deceitfulness in that affair."

This hath been touched elsewhere. The lords were the five in the Tower for the plot; and it seems that his determining upon the question to bail them helped to lift him into his place of chief of the King's Bench; but, at the touch, he failed.

334. "Offer to come upon the Scotch affairs."

This was a presumption no English counsellor, but the premier minister, pretended to; and shows a violent forwardness as if it aimed at no less.

335. "Trimming *pro* Sacheverel, *redarg. attorn.*" (Trimmed for the side of Sacheverel, and reprov'd the attorney general.)

Mr. Sacheverel was a fierce hero against the court in the House of Commons; and being prosecuted by the attorney general for some misdemeanor, the lord chief justice sided with him and reprov'd the attorney general. It is only an instance of his taking in with the heads of the anti-court party.

336. "*Introductio Roe.*" (Introduced Roe.)

This was another like instance; for Roe was a close

¹ He was subsequently expelled by a vote of the house. (*Kennett*, vol. iii. p. 672.) On the revolution he was made first commissioner of the great seal, and, having been a violent Tory, was employed to manage that party in parliament. "By him," says Burnet, "began the practice of buying off men, in which hitherto the king had kept to stricter rules." (*Own Time*, vol. iv. 80, 276.)

servant of Monmouth's: which comes vile near siding against his master and benefactor the Duke of York.

337. "Noisy in nature. Turbulent at first setting out. Deserter in difficulties. Full of tricks. Helped by similar friendships. Honesty, law, policy, alike."

This, to conclude, is the summary character of the Lord Chief Justice Jeffries and needs no interpreter. And since nothing historical is amiss in a design like this, I will subjoin what I have personally noted of that man; and some things of indubitable report concerning him. His friendship and conversation lay much among the good fellows and humourists; and his delights were accordingly, drinking, laughing, singing, kissing, and all the extravagances of the bottle. He had a set of banterers for the most part, near him; as in old time great men kept fools to make them merry. And these fellows abusing one another and their betters, were a regale to him. And no friendship or dearness could be so great in private which he would not use ill, and to an extravagant degree, in publick. No one that had any expectations from him was safe from his public contempt and derision which some of his minions at the bar bitterly felt. Those above or that could hurt or benefit him, and none else, might depend on fair quarter at his hands. When he was in temper and matters indifferent came before him, he became his seat of justice better than any other I ever saw in his place. He took a pleasure in mortifying fraudulent attorneys and would deal forth his severities with a sort of majesty. He had extraordinary natural abilities but little acquired beyond what practice in affairs had supplied. He talked fluently and with spirit; and his weakness was that he could not reprehend without scolding; and in such Billingsgate language as should not come out of the mouth of any man. He called it "giving a lick with the rough side of his tongue." It was ordinary to hear him say, "Go, you are a filthy, lousy, knitty rascal;" with much more of like elegance. Scarce a day passed that he did not chide some one or other of the bar when he sat in the Chancery: and it was commonly a lecture of a quarter of an hour long. And they used to say, "This is yours; my turn will be to-morrow." He seemed to lay nothing of his business to heart nor care what he did or

left undone ; and spent in the Chancery court what time he thought fit to spare. Many times on days of causes at his house, the company have waited five hours in a morning, and after eleven, he hath come out inflamed and staring like one distracted. And that visage he put on when he animadverted on such as he took offence at, which made him a terror to real offenders ; whom also he terrified, with his face and voice, as if the thunder of the day of judgement broke over their heads : and nothing ever made men tremble like his vocal inflictions. He loved to insult and was bold without check ; but that only when his place was uppermost. To give an instance. A city attorney was petitioned against for some abuse ; and affidavit was made that when he was told of my lord chancellor, " My lord chancellor," said he, " I made him ;" meaning his being a means to bring him early into city business. When this affidavit was read, " Well," said the lord chancellor, " then I will lay my maker by the heels." And with that conceit one of his best old friends went to jail. One of these intemperances was fatal to him. There was a scrivener of Wapping brought to hearing for relief against a bummery bond ; the contingency of losing all being showed, the bill was going to be dismissed. But one of the plaintiff's counsel said that he was a strange fellow, and sometimes went to church sometimes to conventicles ; and none could tell what to make of him ; and " it was thought he was a trimmer." At that the chancellor fired ; and " A trimmer !" said he ; " I have heard much of that monster but never saw one. Come forth, Mr. Trimmer, turn you round and let us see your shape : " and at that rate talked so long that the poor fellow was ready to drop under him ; but at last, the bill was dismissed with costs, and he went his way. In the hall, one of his friends asked him how he came off ? " Came off," said he, " I am escaped from the terrors of that man's face which I would scarce undergo again to save my life ; and I shall certainly have the frightful impression of it as long as I live." Afterwards, when the Prince of Orange came, and all was in confusion, this lord chancellor, being very obnoxious, disguised himself in order to go beyond sea. He was in a seaman's garb and drinking a pot in a cellar. This scrivener came into the cellar after some of

his clients; and his eye caught that face which made him start; and the chancellor, seeing himself eyed, feigned a cough and turned to the wall with his pot in his hand. But Mr. Trimmer went out and gave notice that he was there; whereupon the mob flowed in and he was in extreme hazard of his life; but the lord mayor saved him and lost himself. For the chancellor being hurried with such crowd and noise before him, and appearing so dismally not only disguised but disordered; and there having been an amity betwixt them, as also a veneration on the lord mayor's part, he had not spirits to sustain the shock but fell down in a swoon; and, in not many hours after, died. But this Lord Jeffries came to the seal without any concern at the weight of duty incumbent upon him; for at the first being merry over a bottle with some of his old friends, one of them told him that he would find the business heavy. "No," said he, "I'll make it light." But, to conclude with a strange inconsistency, he would drink and be merry, kiss and slaver, with these bon companions over night, as the way of such is, and the next day fall upon them ranting and scolding with a virulence insufferable.

338. Some time before his lordship was preferred to the great seal, the Lord Chief Justice Pemberton was removed and was succeeded by Sir Edmund Saunders. Both of whom, being eminent in the profession of the law and contemporaries of his lordship, I shall take this opportunity of saying something of their characters: but before I proceed so far, it will be proper to solve a question much tossed about in those days. And that was whether the court was not to blame for appointing men to places of judgment, when great matters of law and of mighty consequence depended to be heard and determined, whose opinions were known beforehand; of which it is easy to say (as the anti-court party did) that judges were made to serve turns. This question turns upon the supposed integrity of the government. They are, as all governments must be, intrusted with power; which power may be used to good or ill purpose. If it be to ill it is no objection to the reasonableness of the power, because power must be. Here a government is beset with enemies ever watching for opportunities to destroy it; and, having a power to choose whom

to trust, the taking up men whose principles are not known is more than an even chance that enemies are taken into their bosom. Here the government first consulted of the justice by law against the city's charter, and found, by clear advice, that it was forfeited and ought to be accordingly condemned; and upon the event vast importances hung; even the peace of the nation. Would any government in the world trust that justice to the arbitrament of enemies or run the hazard of having such? Or, were it a doubt of opinion only, would they not be sure of men to judge, whose understandings and principles were fore-known? What is the use of power but to secure justice? It may, it is true, protect the contrary; and so men may kill one another; as they say that every single man hath the power of life and death. But that is not an exception against the just use of a power or that men may not carry knives in their pockets. But it is to be observed that these kind of objections are commonly wheedles; and if governors hearken to them they are probably lost; and those who are the objectors laugh in their sleeves and, in their turn, outdo, many bars, all that themselves found fault with. The true distinction is, when governments use powers that do not belong to them (as high courts of justice); and when they use only such powers as are properly lawful, as the ordinary courts of the common law. It is a maxim of law "that fraud is not to be assigned in lawful acts." If governments secure their peace by doing only what is lawful to be done all is right. If they suffer encroachments and, at length, dissolution, for want of using such powers, what will it be called but stupidity and folly? But to proceed to what I intended.

339. The Lord Chief Justice Pemberton was a better practiser than a judge; for, being made chief justice of the King's Bench, he had a towering opinion of his own sense and wisdom and rather made than declared law. I have heard his lordship say that, "in making law he had out-done King, Lords, and Commons." This may seem strange to such as see not the behaviour of judges and do not consider the propensity of almost all to appear wiser than those that went before them. Therefore it is the most impartial character of a judge to defer to eldership or anti-

quity. But to proceed: this man's morals were very indifferent; for his beginnings were debauched and his study and first practice in the gaol. For having been one of the fiercest town rakes and spent more than he had of his own, his case forced him upon that expedient for a lodging: and there he made so good use of his leisure and busied himself with the cases of his fellow collegiates, whom he informed and advised so skilfully, that he was reputed the most notable fellow within those walls; and, at length he came out a sharper at the law. After that, he proceeded to study and practice till he was eminent and made a serjeant. After he was chief justice of the King's Bench he proved, as I said, a great ruler and nothing must stand in the way of his authority. I find a few things noted of him by his lordship.

340. "Case of Lady Ivey, where advised that there was subornation, for which Johnson was ruined, and heart broke."¹

The lady prosecuted Johnson for this subornation by information in the King's Bench, and the cause was tried before Pemberton. It appeared that Johnson had no concern or words but by way of advice to his client; but he was borne down and convict; at which the fellow took despair and died. It was thought his measure was very hard and cruel; and that some mighty point of interest in her ladyship's law-suits depended upon this man's suffering.

341. "Doyle's settlement a cheat, for want of words usual. Q. by whose contrivance. But he advised."

This fraudulent conveyance was managed between Sir Robert Baldock and Pemberton. It is certain it was passed by Pemberton who was the counsel chiefly relied on; but not so certain it was his contrivance; for Baldock had wit and will enough to do it. The device was to make two jointures, as of the manors of A and B, complete, and without words of reference of the one to the other, as *in part*, &c. or *together with* — *in full*, whereby the one called upon the other. The use made of this trick was mortgaging both these estates as free, but, in truth, incumbered with the

¹ See 10 *State Trials*, 627.

jointure and settlement. For upon the proffer of A to be mortgaged, and the counsel demanding a sight of the marriage settlement, that of B was showed. Then, upon the proffer of B, the settlement of A was showed; and so the cheat passed of both.

342. This chief justice sat in the King's Bench till near the time that the great cause of the *quo warranto* against the city of London was to be brought to judgment in that court; and then his majesty thought fit to remove him. And the truth is it was not thought any way reasonable to trust that cause, on which the peace of the government so much depended, in a court where the chief never showed so much regard to the law as to his will and notorious as he was for little honesty, boldness, cunning, and uncontrollable opinion of himself. After this removal he returned to his practice and by that (as it seems the rule is) he lost his style of lordship, and became bare Mr. Serjeant again. His business lay chiefly in the Common Pleas where his lordship presided: and however some of his brethren were apt to insult him, his lordship was always careful to repress such indecencies; and not only protected but used him with much humanity. For nothing is so sure a sign of a bad breed as insulting over the depressed.¹

343. The Lord Chief Justice Saunders succeeded in the room of Pemberton. His character and his beginning were equally strange. He was at first no better than a poor beggar boy, if not a parish foundling, without known parents or relations. He had found a way to live by obsequiousness (in Clement's Inn, as I remember) and

¹ Burnet has given the following character of Pemberton. "His rise was so particular, that it is worth the being remembered. In his youth he mixed with such lewd company, that he quickly spent all he had, and ran so deep in debt that he was cast into a jail, where he lay many years: but he followed his studies so close in the jail that he became one of the ablest men in his profession. He was not wholly for the court; he had been a judge before, and was turned out by Scroggs' means, and now was raised again, and was afterwards made chief justice of the other bench, but not being compliant enough, he was turned out a second time, when the court would be served by none but by men of a thorough-paced obsequiousness." (*Burnet's Hist.*, vol. ii. p. 870. See also 9 *State Trials*, 580.) According to Evelyn, Pemberton "was held to be the most learned of the judges, and an honest man." (*Memoirs*, vol. i. p. 527.)

courting the attorneys' clerks for scraps. The extraordinary observance and diligence of the boy made the society willing to do him good. He appeared very ambitious to learn to write; and one of the attorneys got a board knocked up at a window on the top of a staircase; and that was his desk where he sat and wrote after copies of court and other hands the clerks gave him. He made himself so expert a writer that he took in business and earned some pence by hackney-writing. And thus by degrees he pushed his faculties and fell to forms, and, by books that were lent him, became an exquisite entering clerk; and by the same course of improvement of himself, an able counsel first in special pleading then at large. And after he was called to the bar, had practice in the King's Bench court equal with any there. As to his person, he was very corpulent and beastly; a mere lump of morbid flesh. He used to say, "by his troggs," (such a humorous way of talking he affected) "none could say he wanted issue of his body for he had nine in his back." He was a fetid mass that offended his neighbours at the bar in the sharpest degree. Those whose ill fortune it was to stand near him were confessors, and, in summer-time, almost martyrs. This hateful decay of his carcase came upon him by continual sottishness; for, to say nothing of brandy, he was seldom without a pot of ale at his nose or near him. That exercise was all he used; the rest of his life was sitting at his desk or piping at home; and that home was a tailor's house in Butcher-Row called his lodging, and the man's wife was his nurse or worse; but, by virtue of his money, of which he made little account though he got a great deal, he soon became master of the family; and being no changeling, he never removed, but was true to his friends and they to him, to the last hour of his life.

344. So much for his person and education. As for his parts, none had them more lively than he. Wit and repartee in an affected rusticity were natural to him. He was ever ready and never at a loss; and none came so near as he to be a match for Serjeant Maynard. His great dexterity was in the art of special pleading, and he would lay snares that often caught his superiors who were

not aware of his traps. And he was so fond of success for his clients, that, rather than fail, he would set the court hard with a trick; for which he met sometimes with a reprimand which he would wittily ward off, so that no one was much offended with him. But Hales could not bear his irregularity of life; and for that, and suspicion of his tricks, used to bear hard upon him in the court. But no ill usage from the bench was too hard for his hold of business being such as scarce any could do but himself. With all this, he had a goodness of nature and disposition in so great a degree that he may be deservedly styled a philanthrope. He was a very Silenus to the boys, as in this place I may term the students of the law, to make them merry whenever they had a mind to it. He had nothing of rigid or austere in him. If any near him at the bar, grumbled at his stench, he ever converted the complaint into content and laughing with the abundance of his wit. As to his ordinary dealing, he was as honest as the driven snow was white; and why not, having no regard for money or desire to be rich? And, for good nature and condescension there was not his fellow. I have seen him for hours and half-hours together, before the court sat, stand at the bar with an audience of students over against him putting of cases, and debating so as suited their capacities and encouraged their industry. And so in the Temple, he seldom moved without a parcel of youths hanging about him, and he merry and jesting with them.

345. It will be readily conceived that this man was never cut out to be a presbyter or any thing that is severe and crabbed. In no time did he lean to faction but did his business without offence to any. He put off officious talk of government or politics with jests, and so made his wit a catholicon or shield to cover all his weak places and infirmities. When the court fell into a steady course of using the law against all kinds of offenders, this man was taken into the king's business; and had the part of drawing and perusal of almost all indictments and informations that were then to be prosecuted with the pleadings thereon if any were special; and he had the settling of the large pleadings in the *quo warranto* against London. His lord-

ship had no sort of conversation with him but in the way of business and at the bar; but once, after he was in the king's business, he dined with his lordship and no more. And there he showed another qualification he had acquired, and that was to play jigs upon an harpsichord; having taught himself with the opportunity of an old virginal of his landlady's; but in such a manner, not for defect but figure, as to see him were a jest. The king, observing him to be of a free disposition, loyal, friendly, and without greediness or guile, thought of him to be the chief justice of the King's Bench at that nice time. And the ministry could not but approve of it. So great a weight was then at stake as could not be trusted to men of doubtful principles, or such as any thing might tempt to desert them. While he sat in the court of King's Bench he gave the rule to the general satisfaction of the lawyers. But his course of life was so different from what it had been, his business incessant and, withal, crabbed; and his diet and exercise changed, that the constitution of his body, or head rather, could not sustain it and he fell into an apoplexy and palsy which numbed his parts; and he never recovered the strength of them. He out-lived the judgment in the *quo warranto*; but was not present otherwise than by sending his opinion, by one of the judges, to be for the king, who at the pronouncing of the judgment declared it to the court accordingly, which is frequently done in like cases.

346. But, to return to his lordship. I may state another case¹ in which it appeared his lordship's consideration of justice surmounted his will, which was always inclined to be good to those of his profession especially if he had a real value and esteem for them. The Duke of Bucks was disposed to sell an estate in Leicestershire. It was while my Lord Nottingham had the great seal. His son Heneage, a celebrated orator in chancery practice, had formerly bought of the duke an estate at Aldborough in Sussex: and not a few suits depended in court between his grace and his creditors and trustees in which the contention ran high. Mr. Ambrose Philips, an eminent practiser in the

¹ Reported in 1 Eq. Ca. Ab. 18, c. 10. 1 Vern. 227.

court, sought to buy the Leicestershire estate of the Duke of Bucks and contrived to use the name of Mr. Heneage Finch in the treaty. On the other side, it was told the duke that if he let Mr. Finch have the purchase at an easy rate it would be taken as a respect, and turn to account in his causes. So the matter went on and the purchase by payment and sealing finished. Then the duke found out that he had been imposed on, and that Philips and not Finch was the real purchaser; which if he had known before he would not have taken under £2,000 more than the price he had received. He was so unsatisfied that he brought a bill against Philips to be relieved as to this £2,000, and by circumstances in the cause it was plain to his lordship that the duke's price took in that £2,000, but that, for Mr. Finch's sake (or rather his father's) he had bated it; and also that it was so pretended to him only to make him bate that sum; so that his lordship decreed Philips to pay that sum over and above his purchase money; which £2,000 he had got off by a wily false pretence of Mr. Finch's being the purchaser.

347. I shall not select any more of his causes here. These were such as none ever traduced; and they may be collated with some others that have been so used, to be found in fit place; where it will appear that interest and faction will attack the best as well as worst actions of a magistrate: for slander is an accuser and not a defender, and makes the worst construction even of the worthiest proceedings; and when strictly just allows none at all to be—as they ought to be—esteemed good. But I must not forget to mention one serious deliberation his lordship had with himself touching the places of masters in chancery; whether he should sell them for a price or give them freely. And once he was inclined and almost resolved to give them, being of opinion that the court had not so much power to coerce exorbitances or to control their profits when they bought their places, as if they were conferred gratis: for, upon the least rumour of a reform, they cry out *purchase, valuable consideration, &c.* Otherwise there might be a power, for the good of the suitors and advancement of justice, to curtail even their accustomed profits. But upon mature consideration of the matter, it did not appear

certain to his lordship that pure gift would entitle him to that arbitration over them as he desired and thought to use; but as soon as they were touched, they and all their tribe of relations friends and interests, nay, other officers with theirs also, would raise as hideous a clamour and be as troublesome to his lordship as if he had bestowed them free. And then he could not hope to return the whole twelve while he sat there, whereby to lay all under an equal circumstance: And it was a regulation that could not be made but by public authority, which might control all alike; and he had no reason to quit a certain advantage to himself upon a very doubtful prospect to do any good thereby. And he also reflected how indifferently such a generous act would be accepted by the public. It would have been termed either vanity or folly; and perhaps both: and all the skilful had reputed no better of him; and so, instead of having the action approved, he had been rendered contemptible for it as one that did not understand his own advantages. If selling such places was inconvenient, constant usage that established it must answer. A thankless good-will is a weak virtue and apt to yield to interest. So his lordship gave way to follow the steps of his predecessors, and disposed those places for a price as they had done before him; but withal to be satisfied of the character and fitness of the person presented to him.

348. We here take leave of the high Court of Chancery (a gross cargo upon the shoulders of the lord keeper), having little or nothing more to say of that grand judicial province; and repair to the state court where the king was left in full honour and tranquillity. His lordship designed to have left behind him the transactions of the court, during his ministry as lord keeper, compiled by himself. I have heard him commend the passage of Tacitus in his history, to begin with the characters of persons active in public affairs and then the state of the empire. And he had gone so far towards it, as to note down some names of persons considerable at court, whom he intended to characterise and decipher; with abundance of items and passages: but he had no time nor life to bring any such design to perfection. He begins with the state of the

Cabinet Council, that consisted of those few great officers and courtiers whom the king relied upon for the interior dispatch of his affairs. And as offices of the law, out of clerkships, spawn other offices, so this council was derived from the Privy Council which, originally, was the same thing and derived out of the *magnum concilium*, by that name mentioned in the rolls of parliament; and the same, out of parliament, authorized by King Henry VII. was known by the place where it sat, viz. the Star-chamber. Assemblies at first reasonably constituted of a due number and temper for dispatch of affairs committed to them, by improvident increase came to be formal and troublesome, the certain consequence of multitude, and thereby a new institution becomes necessary: whereupon it is found easier and safer to substitute than to dissolve. Thus the cabinet council, which at first was but in the nature of a private conversation, came to be a formal council and had the direction of most transactions of the Government, foreign and domestic. The Spaniards have peculiar councils, called *juntos*, assigned to each great branch of the royal power, which prevents such sub-emergent councils as these.

349. His lordship's first note is, "Seymour lately withdrawn."

This Mr. Seymour was eldest son of Sir Edward Seymour of Devonshire, one of the knights of the Bath. From being a wild spark about town, he came early into the court and was of that gang that routed the Lord Chancellor Hyde. His entrance was through the parliament; for being buoyed upon the Western alliance he was considerable in the House of Commons. He served as speaker there divers years and, as such, was called to the Privy Council. He was ambitious and proud in the highest degree;¹ and was supposed to decline no means that tended to his advancement. When he was of the Privy Council, he scorned to speak at the lower end, where his

¹ "He had a sort of pride so peculiar to himself, that I never saw any thing like it:—he had neither shame nor decency with it. He was violent against the court, till he forced himself into good posts. He was the most assuming speaker that ever sat in the chair. He knew the House, and every man in it, so well, that by looking about he could tell the fate of any question." (*Burnet's Own Time*, vol. ii. p. 656.) He

place was, but commonly walked up nearer the king, and standing behind the chairs of the chancellor or other great lords, spoke to the king. And as his nature so his speeches were often arrogant and disrespectful. Once at the council, he said to the king, "Sir, how long will your majesty prevaricate with yourself?" The king, muttering, repeated the word "prevaricate" divers times but made no reply. This, probably, joined with other like-tempered speeches, lost him the king's favour. It is very imprudent to give offence to great men; and no honest meaning will set it right: for it loosens the personal interest of the adviser and, consequently the efficacy of the advice. It is said that Æsop reproached Solon for his unsavoury answer to Cræsus; for, said he, "What did you come for if you did not intend to please the man?" His lordship was very sorry that Seymour was gone; because his assuming temper might have allayed the over-weening forwardness of some others of the great men; and he thought him to be a man of honour and cordial to the true English interest.

350. His lordship's state of the cabinet was wrote thus:

"Posture of the cabinet.

"Earl of Radnor, lord president.

"Marquis of Halifax, lord privy seal.

"Lord Conway, } secretaries.
"Secretary Jenkins, }

"Lord Rochester of the treasury.

"Duke of Ormond.

"Sidney Godolphin."

This posture of the cabinet pleased his lordship well enough; and it is plainly that which stood when he entered, because no notice is taken of the Earl of Nottingham, lord chancellor.—The Earl of Radnor, formerly Lord Roberts of Cornwall, was a good old English lord who was a mal-content when that called the Cabal reigned under the influences of Clifford and Shaftesbury. But upon the rising of

subsequently quarrelled with the court on the question of the Bill of Exclusion, and was one of the first to welcome the Prince of Orange. He was a very corrupt man, and in the year 1680 was impeached for his misconduct. (*See the proceedings, Howell's State Trials*, vol. viii. p. 127.)

the contrary (or, rather, fanatic) party, that apparently distressed the king and thereby forced him upon measures of safety which were also the true interest of his Government, the Lord Roberts came in, and notwithstanding his uncontrollable testiness and perverse humours, did the king very good service.—The Marquis, formerly Sir Henry Savile of the North, was a person of incomparable wit, formerly a malcontent also but came in to rescue the crown and continued firm all King Charles the Second's reign; but then, and afterwards, he openly oppugned popery and particularly in the reign of King James II.¹ For when the point of taking away the Test and penal laws was urged with pretence of an equivalent, he wrote a small tract called "*The Anatomy of an Equivalent.*"²—Of the secretaries, the Lord Conway was rather a person of great interest, fortune and pleasure, than cut out for application to much business.³ But Sir Leoline Jenkins was the most faithful drudge of a secretary that ever the court had. He was a civil lawyer, bred and practised; and from the top of that profession was taken into the court.⁴ For he was dean of the Arches, judge of the Admiralty for divers years, and withal (as the way of that faculty is) practised as advocate in all courts where he was not judge. He was also his majesty's advocate-general. This good man was ambassador and went through the treaty of Nimeguen, and, coming home, was

¹ Lord Halifax was the head of the party called *Trimmers*, and in some respects partook of the qualities which distinguished the mercurial Shaftesbury. "He studied to oppose every thing, and to embroil matters all he could. His spirit was restless, and he could not bear to be out of business." (*Burnet.*)

² The *Anatomy of an Equivalent* is comprised in Lord Halifax's *Miscellanies*.

³ "He was so very ignorant of foreign affairs, that, his province being the North, when one of the foreign ministers talked to him of the Circles of Germany, it amazed him: he could not imagine what circles had to do with affairs of state." (*Burnet's Own Time*, vol. ii. p. 919.)

⁴ "He was," says Burnet, "a man of an exemplary life and considerably learned; but he was dull and slow. He was suspected of leaning to popery though very unjustly. But he was set on every punctilio of the Church of England to superstition, and was a great asserter of the Divine right of monarchy, and was for carrying the prerogative high." (*Own Time*, vol. ii. p. 837.) Pepys terms him "an excellent man both for judgment and temper, (yet majesty enough,) and by all men's reports not to be corrupted." (*Diary*, vol. ii. p. 33.)

made secretary. His learning and dexterity in business was great; but his fidelity surmounted all; for which reason he was maligned by the fanatics in the highest degree, even to persecute his name and fortunes after he was dead; as is showed in the Examen. His lordship contracted an intimacy with this gentleman which I might call friendship; but the character is too general; and their union was purely respecting the king's affairs, in which they laboured with an exemplary accord.—The Lord Rochester,¹ formerly Lawrence Hyde, one of the younger sons of the Earl of Clarendon, was a person adroit in all matters of wit and business, being observed to be always early plodding at the scrutiny of accounts and estimates before the other lords came. His infirmities were passion, in which he would swear like a cutter, and the indulging himself in wine. But his party was that of the church of England, of whom he had the honour for many years to be accounted the head. For all men that aim to become great, espouse a party and, if possible, get to be trusted as the head of it, for then they have somewhat wherewith to terrify and, on the other side for their own interest, to sell, or betray. The Duke of Ormond was a nobleman of rigorous honour and who, next the crown, had the chief authority in Ireland. He was an old cavalier and inexpugnable loyalist. Mr. Godolphin was a courtier at large bred a page of honour; he had, by his study and diligence, mastered not only all the classical learning but all the arts and entertainments of the court; and being naturally dark and reserved, he became an adept in court politics. But his talent of unravelling intricate matters and exposing them to an easy view, was incomparable. He was an expert gamester and capable of all business in which a courtier might be employed. All which, joined with a felicity of wit and the communicative part of business, made him be always accounted, as he really was, a rising man at court.²

¹ Lawrence Hyde was the second son of the celebrated Earl of Clarendon, and was created Earl of Rochester by Charles II.

² Of Godolphin, who enjoyed the confidence of four successive Sovereigns, Burnet has left us the following singular character. "He was the silentest and modestest man that was perhaps ever bred in a court: he had a clear apprehension, and despatched business with great method,

351. His lordship's next note stands thus,

“Alterations.

“Lord Sunderland introduced, and made secretary in the room of the Lord Conway.”

This change was very mysterious at that time; but the sequel hath demonstrated that the Duke of York brought it about; for the Lord Sunderland had engaged in all his measures and wrought accordingly, till he had his own design accomplished in the ruin of his master. He had been secretary before and came in when the Lord Shaftesbury was made lord president of the council, and then was looked upon as an omen of a falling court: so early was he understood. It is well remembered that, when the factious side of that council and no less the House of Commons, were intent upon turning out the king's friends and placing the opposites in their room, and divers heaves were made at the Duke of Lauderdale and the Lord Keeper North, and the commissions of the peace and lieutenancy were to be reformed, there was not a little opposition made; and the king was careful, by not yielding to these men, to save himself. The speech of this noble lord at the council in his drawling way, is related in the *Examen*,¹ and will serve to illustrate the politics of that peer. The king could not at

and with so much temper that he had no personal enemies; but his silence begot a jealousy, which has hung long upon him. His notions were for the court, but his incorrupt and sincere way of managing the concerns of the Treasury, created in all people a very high esteem for him. He loved gaming the most of any man of business I ever knew; and gave one reason for it, because it delivered him from the obligation to talk much. He had true principles of religion and virtue, and was free from all vanity, and never heaped up wealth, so that all things being laid together, he was one of the worthiest and wisest men that has been employed in our time.” (*Own Time*, vol. ii. p. 831.)

¹ P. 77; where we have a very amusing specimen of the court pronunciation in the reign of Charles II. “And then my Lord Sunderland, in his court tune, (for which he was very particular, and in speaking had made it almost a fashion to distend the vocal letters,) ‘What, said he, if his maajesty taarn out faarty of us, may not he have faarty others to saarve him as well? and whaat maatters who saarves his maajesty, so lang as his maajesty is saarved?’” It appears that Oates thought proper to adopt the same affected pronunciation. At the bar of the House of Commons he accused the Queen of high treason in these words: “Aye, Taitus Oates, accause Catherine, Quean of England, of haigh traison.”—*Examen*, p. 186.

that time bear with him long, but turned him out ; and so the council was purged ; for the rest of the party were disbanded or left out or deserted about the same time. All this was less strange than his coming in again. We thought that the Duke of York had not interest enough to have done it without the adjunct of the French ladies, whose favour with money and courtship he failed not to purchase. It is certain that he was a most fastidious aversion to the Lord Keeper North. They say that animals, out of a contrariety of their natures, have a mutual antipathy and can scarce bear the sight of each other. I know well that his lordship scarce ever saw or spoke of him, without a chagrin ; and, after he was restored to the secretary's office and place in the cabinet, his lordship declared he had no hopes of any good at court. Nor was this noble lord behind-hand with his lordship in his kind thoughts towards him ; which, sprouting out in speeches and actions, were as venomous as the deadly nightshade ; but, for want of apt concurrents, as to all harm to his lordship or his reputation, vain and enervous. He laid a plot to fasten a whore upon his lordship, that he might lose the reputation he had of moral virtue untainted. That he rode upon a rhinoceros, that he might be despised ; and other stratagems as silly, of which a particular account will be given elsewhere : and all this without the least offence, by word or action, on his lordship's part to disgust him. But the canker was his lordship's unmoved constancy and fidelity to the church and monarchy settled by law, both which his lordship (the earl) wrought to overturn : and he could not bear such an obstacle in his way without attempting to remove it. However such enmities at court have the effect of friendships elsewhere : for a man is known by his avoiding as well as by his herding with particular people. I must not forget to add here, that his lordship, by his external behaviour with respect to this state secretary, made no resentments for his clandestine injury, but kept that even temper with him as the king's affairs required he should do. His lordship had a brother-in-law¹ who, being a courtier and of a lofty genius, habi-

¹ William, second Earl of Yarmouth, married Elizabeth, sister of the Lord Keeper. James II. made him Treasurer of the Household in February, 1686-7.

tuated in the gaming society of that lord, and was so far imposed on as to mediate a nearer conversation with him ; and it went so far, that his lordship yielded to a project of an invitation by dining with the secretary ; and I had the honour to be there : but I must say, that I never saw so silent a feast as that was. There was little to be amended, for little was said on either side. We came away ; and his lordship chose to be so far rude as not to cross invite, rather than bear the like consequences of such another intercourse of his own designing.

352. The next note runs thus, “ Spring 1684. Secretary Jenkins quits to Sidney Godolphin.”

The loss of this secretary was a great mortification to his lordship. I have often heard him say, upon that occasion, that he was absolutely alone in the court ; and that no one person was left in it with whom he could safely confer in the affairs of the public. While the secretary stood and the Lord Halifax and the Lord Hyde, who had spirits and were hearty, they often met at the secretary's in evenings to consider of such dependances as were to come before the king the next day. The benefit of which was very considerable to the king's affairs as well as to themselves ; for so the matters were better understood than if no previous deliberation had been taken ; and they were not unprepared to speak to them in terms proper for his majesty to entertain without mistakes, or clashing one with another ; as happens sometimes about mere words, when the thing is agreed. But, after this change, they all began to look gravely upon one another and to talk only of indifferent things. This secretary was not turned out but quitted for consideration, as the note implies. He was a person that, together with incomparable veracity, fidelity, industry and courage, had some personal failings ; for being used to forms he was a little pedantic and of a tender visage ; for being inclined to laugh immoderately at a jest, especially if it were smutty, the king found him out and failed not, after the tendency of his own fancy, to ply his secretary with conceits of that complexion ; and so had the diversion of laughing at the impotence of the other's gravity. It is not amiss to subjoin here an *historiette*, to show the value of this minister. In the Westminster parliament the House

of Commons was very averse to the court and, from a party very prevalent there, the loyalists fell under great discouragements. Among the rest, this good secretary was found fault with for something relevant he had uttered on the court side. Divers members, from the humility of his manner in speaking, supposed him to be a mild yielding man and, to expose him, consulted about censuring his words and ordering him to the bar and to ask pardon upon his knees. And if this experiment had been pushed and he had squeaked, as they called it, that is recanted and whined for an excuse, then he had been lost in every respect; for a sneaking man is despised and rejected on all sides. But for fear this, in the execution, might have an unlucky return upon them, they resolved first to sound him; for a secretary of state is no slight person to send to the Tower, as must have been done of course if he had stood firm. Thereupon, some half-faced friends told him that he would be accused, and must kneel. He answered them, in his formal way, "that he was a poor creature, not worth the resentment of the House: he should be always submissive to such great men as they were in every thing that concerned himself. But, as he had the honour to be his majesty's secretary of state, the case was not his but his master's, and, by the grace of the living God, he would kneel to and ask pardon of no mortal upon earth but the king he served, and to him only would he give an account of any thing done with intent to serve him." This showed that the business was like to be too hot for that time and the design of it like to fail; and so it was let drop. But the secretary was met with at Oxford, when he was ordered to carry up the impeachment against Fitzharris; and, after all his huffing and striving, he found it best to do it.¹ But to return, it was notorious that, after this secretary retired, the king's affairs went backwards; wheels within wheels took place; the ministers turned formalisers and the court mysterious. And no wonder when the two then secretaries, professed gamesters and court-artists, supplied the more retired cabals and, being habituated in artifice, esteemed the honest plain

¹ See *Examen*, p. 284.

dealers under whose ministry the king's affairs were so well recovered, to be no better than beasts of burthen. And the next note shows the result of this mercurial courtship.

353. "Upon discovery of the conspiracy, D. Y."

The subject of these notes being the cabinet, it is here plain that a handle was taken from that discovery to let in the Duke of York. The common obloquy upon the court had all along been, that the duke, and consequently the papists, had influence upon the public counsels: and not long before this time, such a step as this was would have been loudly ventilated abroad as a plain declaration that popery was to govern, with design to have ruined the king's interest and credit with the gentlemen of England. But now faction was low, though not dead; and the new courtiers thought any thing might be done. And in truth, though little appeared to them, yet, to such as conversed more promiscuously, it was plain that faction warmed upon it. But this was to be said for it. The Rye conspiracy was aimed as well at the person of the duke as of the king; for one dose of pills served for both: and it was very reasonable that the duke should be present at the shaving his own beard. This did a little screen the truth of the matter which was, that the Papists through the duke, intended, under the umbrage of this conspiracy, to make some advances at court; but the sequel will show more.

354. "After, northern circuit 1685, Lord Chief Justice Jeffries appointed for it."

This note concludes his lordship's state of the cabinet, and the several postures it had in the reign of King Charles II. after his lordship had the seals. And now from this broad hint, I take the rise of a notable piece of history. After the Lord Chief Justice Jeffries (of whom I have said somewhat before) was assumed into the king's privy council, which was some time before he came into the cabinet, there went forth a mighty fame of his greatness at court; which was mostly artificial although such incidents commonly blow up reports far beyond truth. When this chief justice had chosen the northern circuit for his expedition, it was so contrived that, on a Sunday morning when the court was full, the king should take

notice of his good services and, in token of his majesty's gracious acceptance of them, give him a ring from his royal finger. This was certainly so done, by way of engine to rear up a mighty machine of authority ; and the printed news informed the whole nation of it. Whereupon the same lord chief justice was commonly reputed a favourite and next door to premier minister ; sure enough to eclipse any thing of the law that stood near him. It is to be remembered that, at this time, the trade of procuring charters to be surrendered was grown into a great abuse ; and nothing was accounted at court so meritorious as the procuring of charters, as the language then was. Therefore, as it was intended that the chief justice should be ingratiated into his majesty's good opinion and favour as much as was possible ; this care was taken that, through the fame of his great honour, he should have appeared so to the country , and in consequence of that, wherever he went, all charters must needs fall down before him ; and for that reason the towns were to be prepared by *quo warrantos* sent down. This affords an useful speculation how mean persons derive to themselves merit from the power of great ones, who shall ascribe to their inferiors those very events which flow really from their own power. Here the chief justice is made to seem powerful by the king with whose authority he is graced ; and that makes the affrighted towns, at his instigation, surrender. This must be argued to demonstrate to the king that the chief justice had a mighty influence upon the country, having done greater things in his majesty's service than any judge had ever done before ; when, in truth, it was not his own proper influence but the king's power through him, that had such virtue in the country. It was so also with respect to the city of London ; over which the chief justice exercised a sort of violent authority. That he had a great influence there, was true ; but it was because the citizens thought him a great man at court ; and he obtained favour at court because he was thought to have a great influence in the city. Thus the court conferred their own influences and took them back by rebound, as so much merit reflected from the person that managed them. Then it is also to be remembered that the north of England is the seat of the Roman

Catholic interest ; and some things were to be managed by this chief justice with respect to them, which no other of the twelve judges would have done, and I am about to relate.

355. In the course of this northern voyage, which was carried with more loftiness and authority than had been known at any assizes before, the charters (as was to be expected) tumbled down, and the chief justice ordered all the under-sheriffs and bailiffs to give him perfect lists of all persons who, upon account of recusancy, lay under commitment. When he returned to London and his great services, which argued no less abilities to serve the king, were displayed, the next step was his being appointed to attend his majesty at the cabinet. The lord keeper, who was but an observer of these motions, did imagine that somewhat extraordinary was to come forth at the next meeting ; the rather because, on Sunday morning (the meetings were usually on Sunday evenings) the Duke of York spoke to his lordship "to be assistant to a business which, that evening, would be moved to his majesty ;" and that morning, his lordship observed a more than ordinary shyness in the countenances of the great men whose remarkable gravity satisfied him that they were upon their guard. But what the matter was, his lordship did not discover till he came to the cabinet ; where, after the king was come, and they were sat, my Lord Chief Justice Jeffries stood up, and, with the rolls of recusants before him, "Sir," said he, "I have a business to lay before your majesty, which I took notice of in the north and which will deserve your majesty's royal commiseration. It is the case of numberless numbers of your good subjects that are imprisoned for recusancy. I have the list of them here to justify what I say. They are so many that the great gaols cannot hold them without their lying one upon another." And then he let fly his tropes and figures about rotting and stinking in prisons, concluding with a motion to his majesty that he would, by his royal pardon, discharge all the convictions for recusancy, and thereby restore liberty and air to these poor men. This motion at that time was indeed a swinger ; for in consequence, the execution of it, by such a pardon of all convictions, had lost the king

irrecoverably, spoiled all future parliaments, set up the fanatic interest, his majesty's declared enemies, and disabled his friends from appearing with any countenance for him. The language had been, "Now it is plain—you would not believe us. What is popery if this be not? What signify the laws? Will you not expect some better security?" And the like.

356. His lordship was not to learn such consequences as these. But there was yet more, and what directly concerned himself in the duty of his office. He could turn his thoughts no way clear of precipices, which to him were fatal though others made account to leap over them. It must needs occur that such a pardon must pass the great seal, of which he was the keeper, whose office it was to affix it: and although in strictness he could not disobey the king's express command in that, or any thing else that might be called an act of grace, nor be rendered criminal for so doing; yet all the loyal party of England, who were his sure friends, would have expected from him such strong and plain advice to the king as might have averted him from such a pernicious step whatever the consequence was to himself, who ought, as many would have said, to have quitted the seals rather than held them on such terms; and for certain, the next parliament had resented it in all extremity. Now let us see with what temper, prudence, and courage, his lordship comported under this sudden and desperate trial. After the Lord Chief Justice Jeffries had done, and composed his rolls and papers upon the table (which none there cared to inspect), his lordship, the lord keeper, sat a while silent as the rest, expecting some of the lords eminently in the protestant interest, as Halifax, Rochester, &c. should begin to speak; but finding no probability of their saying any thing, but rather a disposition on their parts at that time to let the thing pass, he applied himself to the king, and "Sir," said he, "I humbly entreat your majesty that my lord chief justice may declare whether all the persons named in these rolls were actually in prison or not." The lord chief justice hastily interposed, saying he did not sure imagine any one could suspect his meaning to be that all these were actual prisoners; for all the gaols in England would not hold

them. But if they were not in prison their case was little better; for they lay under sentence of commitment, and were obnoxious to be taken up by every peevish sheriff, or magistrate, and were made to redeem the liberty they had with gross fees, which was a cruel oppression to them and their families. Then the lord keeper turned to the king and "Sir," said he, "I beg your majesty will consider what little reason there is to grant such a general pardon, as this is, at this time. For they are not all Roman Catholics that lie under sentence of recusancy, but sectaries of all kinds and denominations; perhaps as many or more who are all professed enemies to your majesty and your government in church and state. They are a turbulent people and always stirring up sedition; and if they do so much when they lie obnoxious to the laws, which your majesty may inflict upon them at your pleasure, what will they not do if your majesty gives them all a discharge at once? That would be to quit the greatest advantage you have of securing the peace of the nation. Is it not better that your enemies should live under some disadvantages and be obnoxious to your majesty's pleasure, who may, if they are turbulent and troublesome, inflict the penalties of the law upon them? And as to the Roman Catholics, if there be any persons to whom your majesty would extend the favour of a pardon, let it be particular and express and not universally, to set your enemies, as well as friends, at ease. And, after all, the disadvantage they lie under is but the payment of some fees to officers, which is compensated by the exemption they have from serving in chargeable offices which other conformable persons sustain. But, in a general view of the ill uses that would be made of such a step in the nation at large, to the prejudice of your majesty's interest and affairs both in and out of parliament, as they were obvious, so the extent of them is beyond my view, and, as I think, have no end;" or to this effect. The king gave great attention and the other lords wondered; but no farther word was made of the matter; and they proceeded to other business. That night his lordship came home full of melancholy; and it was some time before any person, near him, knew the occasion of it. But he would sometimes break out in

exclamations, as "What can be the meaning! Are they all stark mad!" and the like. That very night he took his pocket-almanack, and, against the day, wrote

357. "Motion, *cui solus obstiti.*"

Motion, which I alone opposed.

For he accounted this action of his the most memorable that he had ever done. He was not without a jealousy that one great end of that pestilent, absurd motion was to put a thorn in his foot, and, by way of dilemma, heave him out of his place. For, if the king had commanded and he refused to put the seals to such a pardon, then he deserved to be removed by a just displeasure. If he had complied, then the parliament had effectually done it. And the shift the Lord Nottingham used in sealing the Earl of Danby's pardon, that is by surrendering the seal to make it the king's act (which he called a stamp of creation) might not have served his lordship's turn so well, whom both papist and fanatic strove, with all their might, to remove out of their way: and small pretensions had served their turn, as appeared in divers attempts of that sort which are largely displayed elsewhere and particularly in the *Examen*. But thus much I am led, by his lordship's notes, to say of the cabinet council.

358. His lordship was not altogether a stranger to this disposition touching imprisonments; for the king had been troubled about them before or, at least, thought to mention the hard cases to his new lord keeper, urging him to get due information of them and to find some expedient for their relief. There was no doubt but this proceeded from solicitation in favour of the recusants on the side of the papists; though, at first, it bore the visage of a sectarian party. For, about that time, many Quakers and conventiclers of all sorts had been prosecuted for not coming to church, and lay under sentence of the law, partly as recusants and partly on other accounts, whereof some were in prison and others not; and very few popish recusants, purely for recusancy. His lordship applied himself to the means of gaining a regular and strict information of this whole affair, in order to lay the same before the king and so advise what was fit to be done thereupon. And accordingly, in February 1682, which was not long

before the vernal circuit that year, his lordship wrote to Mr. Justice Jones, and probably to the rest of the judges then preparing for their circuits, the following letter :

359. "Mr. Justice Jones,

"His majesty, having received complaint that many persons of mean condition lie in prison upon criminal prosecutions, in several gaols of this kingdom, where they endure great hardships and miseries because of the straitness of the prisons, in respect of the number of prisoners and for want of necessaries, is desirous, for their relief, to extend his royal compassion to such of them as shall be capable thereof upon their particular cases. In order whereunto, his majesty would be informed by his judges of assize, in their several circuits, or by some justice of the peace in the several counties and places where the prisons are, who may receive an account thereof from the sheriffs, gaolers, or other persons of credit.

1. "Whether the number of prisoners is so great that the prisons cannot conveniently contain them; and if it be, then farther to certify the names of such persons as are in prison upon such prosecutions; and if any be under the age of twenty-one years, and what the offences are, and how long they have lain there?

2. "Whether they are poor and unable to maintain themselves, and whether they are Papists, Quakers, or other sects, if it can be known?

"These are to desire you, in your circuit, to receive an account of the particulars above-mentioned and to bring it with you at your return; or else to give it in charge to two or three of the most discreet justices of such counties, that may send it to me to be laid before his majesty; when he shall think fit to declare his pleasure farther thereupon."

C. S.

360. This letter, as to the prudent and cautious part, admits a sensible comment, respecting this latter pursuit through other hands; of which the account is already given. These points are touched, 1. Actually in prison or not. 2. The prisons capable to hold them or not. 3. The names of the persons. 4. If under twenty-one years. 5. How long in prison. 6. Whether poor or not. 7. Whether Papists or Sectaries. All which matters were the subject

of the Lord Jeffries's extreme representation. And to what end? Not, as he moved, a general pardon of all recusants, but capacity of favour according to particular cases; which is what his lordship moved in answer to Jeffries. So that, upon the whole, this very project of getting the general gaol delivery of recusants, viz. their absolute discharge by a general pardon, was jogged upon his lordship, to have had it been moved by him. And, probably, it might have been mentioned to him before, by the king, as a proper remedy; but that his lordship put it off. But not altogether to resist his majesty's disposition to clemency where it might be properly placed, and not be turned upon him in evil constructions, he then put the business into this formal way of writing to the judges. But that did not answer the end of the Roman Catholics, whose work it was (though I believe his lordship thought there was a strong spice of the Fanatic in it), therefore these former returns were not called for; but the business was now put into a better hand, from which it would come roundly off to the purpose intended, viz. a general pardon of all convictions for recusancy; which his lordship again stopped, as I related before. But yet his lordship by several means which, by reason of his authority, he might effect, had full accounts brought him of those items or the greatest part of them. When his lordship first thought fit to discourse with his intimates concerning this flagrant attempt of Jeffries, he expressed the greatest resentment at his being deserted by the other lords, of whom not one either led or followed or gave any countenance or support in a cause that so much concerned the king's service. And from thence he saw what he must trust to amongst them, that is only his own integrity and open dealing without any support from them; and he never after expected an ally or friend in his business at court. The rising sun hath a charming effect, but not upon courtiers as upon larks; for it makes these sing and the others silent. These things I have thought fit to join to his lordship's notes of the posture and changes in the cabinet council when he sat there as lord keeper; and now I proceed to other matters.

361. I have showed the company his lordship had in the

public service during his ministry at court, and their characters and, in some respects, their behaviour. It may not be amiss now, to show what were his lordship's sentiments, and the measures that influenced his actions and were often the subject of his discourses to others. I can with great assurance affirm that, about these times, and for divers years while he sat in the Common Pleas, his thoughts were bent upon serving his country. And indeed, from the very first of his acting judicially, he studied amendments of every thing as might best be by him done for the benefit of the suitors. And after he was taken into public counsels, he not only courted but laid to heart the nation's good ; and, as he saw that decline, he grieved ; and, as he thought it gained a little, he rejoiced. This was easily to be discerned by all his friends with whom he freely conversed. And that kind of pastime when he had liberty to enjoy himself was the most agreeable of any ; I mean the walking to and fro and discoursing freely with his friends ; as will be showed more express afterwards. But after that manner he used to propose his doubts and fears as well as hopes of the public, and take their sentiments. This was his way of refining his notions, viz. upon the test of the opinion of his friends ; to which he gave great regard and never discouraged their freedom. And, when he waited at court, this sort of conversation served to instruct as well as to divert him. And even in the presence of King Charles the Second, who was a free talker himself and encouraged it in those about him, matters of very great consequence would fall in the discourse ; and his lordship had art enough to speak his thoughts truly and agreeably. As once, when the discourse was upon the subject of using lenity or severity in cases of tumult or sedition, some thought that rigours, others that pardon was more proper ; and many were for crushing enemies with open force. His lordship said to the king, that "his majesty's defensive weapons were his guards and his offensive weapons the laws ; and that enemies were to be resisted by opposing force to force but to be punished only by law." I remember this saying of his was taken notice of as an admirable temper in stating the matter of force to the king ; and his lordship had a general applause

for it. Great men and governors are very propense to err in the notion of power, and, out of impatience of opposition and desire of revenge, resort to force which, early or late, turns the evil upon themselves; and with these men, any one that argues against such methods is looked upon as a faint friend, or enemy disguised. But to give the due office to power and proper efficacy to the law, this rule to the king admitted of no ill construction: neither one way, by undermining the guards and the militia (which was the drift of the faction), nor the other way, by setting up the militia against property (which then was calumniated); and, being so fairly insinuated, was at that time no mean service to the crown and nation.

362. His lordship was perfectly at ease in the conscience of his behaviour, and scorned the vulgar and fanatic calumnies that he was a prerogative man and laboured to set up arbitrary power: but notwithstanding all that, he laboured as much as he could to set up the just prerogatives of the crown which were well known in the law and to the lawyers; although it had been much the fashion, as well in Westminster-Hall as at St. Stephen's, to batter the prerogative. He has said "that a man could not be a good lawyer and honest but he must be a prerogative man:" so plain were the law-books in these cases. He was sincerely of opinion that the crown wanted power by law; so far was it from exceeding. It was absolutely necessary that the government should have a due power to keep the peace without trespassing upon the rights of any one; and if it had not such power rightfully, either it would assume and exercise powers that were wrongful (and then what bounds?) or else sedition would prevail and, pulling down one, set up another government entirely wrongful; to which all law and truth being opposite, consequently such a government would be opposite to them and meditate no security but actual force. And what can the people, that are always designing to diminish the just powers of the crown, expect but that the crown should always design to repair itself by a provision of force? Nothing is so sure as that government will be supported by means either rightful or wrongful; if subjects will not have the one they shall have the other. These considerations made his lordship ever set

himself against the Republicans and resist their intended incroachments upon the crown. He thought the taking away of the tenures,¹ a desperate wound to the liberties of the people of England, and must by easy consequence procure the establishment of an army. For when the legal dependance of the monarchy and the country upon each other is dissolved, what must succeed but force? He used often to inveigh against those who perpetually projected to weaken the monarchy, as a sort of men either corrupt and false-hearted or else short-sighted and ignorant. The yet living history of the late times concurred; for what did the people get by robbing the crown of the power to dissolve the parliament and of the militia? There cannot be a more false illusion than it is to suppose that what power the crown lost was so much liberty gained to the people. And yet in these times, a broad-spread party went about with such syren songs to engage the community to join in their project of divesting the king of his commissions of the peace and lieutenancy, &c. All which his lordship saw plainly and detested. I have heard him say, that if the people knew what miseries would be the consequence of these men's having their wills they would stone them as they would mad dogs in the street. It may be esteemed one of his lordship's chief felicities, that his real principles of honour and probity exactly squared with his engagements and services at court. He never had the remorse to have in the least dis-served his country by serving the crown; and the discerning court, and the much more discerning king, saw plainly that he acted from the bottom of his heart and did nothing servile or for flattery, that any way contradicted the series of his conduct and advice; which is more than can be truly said of any of the preferment-hunters of that or almost any time.

363. I shall enlarge no more upon character here, having designed places apart for those matters, but proceed. And in the first place I enter this general protest, that, to my

¹ By statute 12 Car. II. c. 24. The abolition of the military tenures had been long called for, and had been attempted in the reign of James I. The statute is termed by Sir W. Blackstone, "a greater acquisition to the civil property of the kingdom than even Magna Charta itself." (*Com.*, vol. ii. p. 77.)

own certain knowledge, his lordship's great study and labour was to convince and to dispose his company so as they might heartily co-operate with him in the glorious work of bringing the king into the soundest measures of the English government, which were to rule wholly by law and to do nothing which by any reasonable construction might argue the contrary. In this design he was in one respect singular; for he had no self-interest, no boons to ask, no party to head, nor means to sustain an interest at court; depended on nothing but merely the character he bore and his own personal qualifications. Some had the protection of the Duke of York and of the French ladies; others were of the Lord Halifax's party; and some of the Lord Rochester's. But he was in the midst of all the court *solus cum solo*, alone by himself; at least after Jenkins withdrew. But yet he urged continually the same doctrine, that, holding to the law (wherein I always include the established church of England) his majesty was not only safe but growing in power and credit; which, if he forsook the law, would all fall retrograde and scarce ever be recovered. His majesty had good hold and ought to make his station firm. And as this was his lordship's endeavour, so it was his pleasure to see the crown recovered from all troubles and hazards brought over it by faction, that had no advantage at all against the king but what flowed from their affected surmises to the people, that his majesty leaned to popery, affected arbitrary power, and, for aiding these designs, allied with the French. The false steps of the court by improvident war and its certain train, necessity, and then undue means for money, courting Papists and Fanatics by indulgences against the law and the like, gave handles which the Fanatics (though necessary in procuring the indulgences) improved to the king's prejudice in his affairs; and that even till they thought his credit and authority almost sunk. But in the rage of those times, when plots like serpents from corruption bred out of iniquity, the king saw his danger and with the help of a faithful ministry in which his lordship had no mean part, and a resolution to let the laws have their course, recovered his state and, about the time when his lordship received the great seal, had suppressed all the forces of his

factionous enemies and reduced them to utter silence in corners where they were very glad to be covered in safety.

364. As this was his lordship's greatest pleasure so the sequel brought over him a bitter portion of melancholy reflections. For he saw immense troubles a great way off, and, nearer hand, not a little of cloudy prognostic at court: for not only the Papists, but vain projectors of change and flatterers of power, esteeming the king's authority then safe and inexpugnable, began a new game by endeavouring to bring the king off from the sound measures of his faithful ministry. His lordship was the last that stuck firm to him and kept himself from being tainted, with courtship of the succession, by any compliances in matters of religion and undue attempts against law. But on the other side, much endeavour was used to get such a rock of offence, as he was, out of the way; and that was a fruit expected to fall from the reform of the cabinet, as I mentioned before, and by pushing extravagant things towards his lordship, one way or other to break him. But his credit (as I said) was such with the king that no court tricks would fasten to his prejudice; but his majesty supported him, not only in authority but in honour, all his life and would not bear any indecent reflections against either. And his lordship had also the comfort to perceive what few people, even of the court projectors themselves, discerned; which was that the king grew weary of his Sunderlands, Jeffries's, and other (more latent) operators of the new model; and that if his majesty had lived six months longer, probably he had removed them; for he found his affairs move untowardly, and faction, in fresh hopes of a new game, began to be busy and to cast sheep's eyes (as they say) towards elections, in order to corrupt the next parliament, and, if that had happened, it had been scarce possible for the king to have held fast the then general good opinion which the people had of his royal intentions and government; which being well taken care of and preserved had certainly procured him a good parliament: and then, and not otherwise, all had been well. And accordingly, as there was a necessity of calling a parliament soon, his lordship often put his majesty in mind of that and to have a care that no unpopular steps might

corrupt the next elections. As to Jeffries, he began to smell a rat and warped towards mutiny that he was not rewarded enough; as if he thought of turning into the malcontent party. These are the main lines of his lordship's ministry as to politics; which will be verified by the just history of King Charles II. and (if no better appear) in the Examen, together with some particular matters I shall mention in the course of this relation.

365. His lordship's method of living with respect to his great employment, was very commendable: for all his time was devoted to the business incumbent upon him. He put but very little of it to his own use; and what passed in easy conversation, which was the chief of his pleasures, had still a regard to his employ, by enquiring, canvassing, and debating with those of his society, such points as concerned the republic. He had no kind of vice or immorality within his walls: and of what sort his remissions were (for some are necessary to life) I shall give a fuller account afterwards. But it is decent here to name the chief; which was a solitary, or rather speculative, use of music; of which he commonly took a relish at his going to bed; for which end he had an harpsichord at his bed-chamber-door which a friend touched to his voice. But he cared not for a set of masters to consort it with him. And unless it were once under Purcell's¹ conduct, I never knew him use such; for there was somewhat stiff in that way that was not easy. The mornings were for the most part devoted to the justice-seat of the Chancery, either in the court at Westminster or in the cause-room at home, during the usual periods; and not seldom in attendances upon petitions and dispatching the perpetual emergencies of the seal. His house was kept in state and plenty though not so polite as the court mode was. The nobility and chief gentry coming to London were frequent at his table; and, after a solemn service of tea in a withdrawing-room, the company usually left him; and then the cause-room claimed him and held him in pain with causes and exceptions often till late. He had little time to him-

¹ Henry Purcell, the celebrated musician and author of *Orpheus Britannicus*, ob. 1695.

self; for he had this infirmity that he could not bear to make any one wait; but if his servant told him of any person, great or small, that waited without, he could not apply to think of or do any thing till he had dispatched him. The interval between the business of the day and going to bed was his chief refreshment; for then his most familiar friends came to him and the time passed merrily enough. And there it was that the court spies found access to plumb his most free sentiments; but with small profit, for he had the same face and profession in public as he had in private. They could discover only that he was an honest man: but more of this elsewhere. His attendances at Whitehall were chiefly at solemn times; as on Sunday morning, to wait on the king to chapel. That was usually a grand assembly of the court; and the great men had opportunity to speak in discourse to the king as he gave them occasion, of which his majesty was no niggard; and very excellent things said there on the one side and on the other were a high regale to such as had the advantage to stand within hearing. On the week days, those called council days, always, and sometimes committees of council, required his lordship's attendance; and Thursday was always public: others for private business upon summons. His lordship managed at the council table; though there was a lord president who regularly should take up that part. But it doth not always happen that great men, posted there, have the art of examining into and developing intricate matters as are commonly brought to hearing. When the king was at Windsor, the public council was commonly held at Hampton-Court; which was for the ease of attendance. His lordship had a lodging both at Whitehall and Hampton-Court to retire to upon these occasions. The cabinet council usually sat on Sunday evening; and when the court was at Windsor, that was always a travelling day and a lodging was provided for his lordship in the dean's house. His lordship was necessitated to be a courtier, although he had no step of a court nor delighted at all in such an assemblage of eyes and ears always open to caption. He never flattered any man; unless giving no offence which he extended even to his enemies may be accounted flattery. He liked

never the beginning nor end of a fray while it was such. And this made the great judges of the circle agree he might be a good lawyer but they were sure he was no courtier. He listed in no party or interest but the king's; and neither had nor cared for friends who were enemies to his majesty and his government. And on that side only he lay open; for it was possible, and many did come near to a confidence with him by pretending great services in an orthodox way to his majesty; though at the same time enemies to both. I could name some, but for respect to their ashes (which are much more worthy than ever their persons were) I forbear them. If there was any incident upon which his lordship thought fit to take the king's pleasure from his own mouth, or if he had any thing to acquaint his majesty with that required privacy, his lordship's way was to go to court express and choose the fittest times when he thought the king would be least engaged, that he might have more ample discourse. And, commonly he went directly to the bed-chamber, and there sat him down. There was always, in that part of the court, attendants who straight found where the king was and told him my lord keeper was there, and the king, knowing he had somewhat to say to him, never failed to come to him and that without any delay. Which I have heard his lordship speak of as a very gracious respect towards him; enough to have obliged him, if possible, more to his service. King Charles was one that passed much of his time in discoursing, and used to do it freely with his lordship when alone together; by which his lordship picked up some fragments of history many of which are inserted in the Examen; and somewhat of King James's too but not so much. This is the short account of his lordship's course of life with respect to his great office and ministry, that I am capable to give. And I think I have not canted much from the places intended express for particularities of this nature. So I proceed to such affairs as more especially concerned his lordship.

366. It was touched before that the Lord Chief Justice Jeffries was brought forwards and buoyed up by the adverse party of the court, on purpose to ruffle my lord keeper and, by such ways and means as they might lay

hold of or invent, to have him out: in order to which, affronts, disappointments, false stories, and calumnies were, for such attacks, a choice artillery. And that point being once gained, it was presumed that the Lord Chief Justice Jeffries, one ready to do all that was required of him, should succeed. Among other opportunities of this kind, some related to the law in the appointments of judges into vacancies; and in those affairs of common course, the lord keeper is consulted and hath the nomination to the king, of fit persons to be trusted as judges. There was one Serjeant Bedingfeld, a grave but rather heavy lawyer, but a good churchman and loyal by principle.¹ His lordship had cast his eye upon him and intended to nominate him to the king for supplying a place in one of the benches then vacant, but thought fit first to speak with him. Being sent for he came and was told what was designed for him. He was exceeding grateful in acknowledgments of so great a favour and honour done him by his lordship, in thinking of him without his seeking; and said he should ever own his preferment, as long as he lived, to his lordship and to no other person whatever. All which was well. This serjeant had a brother, a woollen-draper in London, who was a creature and companion of the Lord Jeffries. That chief, understanding some way that his friend's brother was to be a judge by the lord keeper's means, sent for the draper and told him plainly, that, if his brother would not take the judge's place as of his provision and interest and not my lord keeper's; or if he so much as went to the lord keeper on such an account, he would oppose him and he should not be a judge at all. After this, the poor serjeant, against his desire was forced to conform; his spirits were not formed for the heroics, and, accordingly to sacrifice the interest of himself and his brother to gratitude. His lordship finding how the wind

¹ This was *Henry* Bedingfeld, fourth son of John Bedingfeld of Halesworth, co. Suffolk, and nephew of Sir *Thomas* Bedingfeld of Darsham Hall, who refused to act as a Judge of the Common Pleas (to which post he had been appointed by a vote of both houses in 1648) after the decapitation of Charles I. The *Henry* Bedingfeld of the text was not appointed a Judge till 13th February, 1686, and died suddenly in Lincoln's Inn Chapel, 6th February, 1687.

sat, dispensed with the man's infirmity although he never came at him; and so by common consent he was made a judge. In this instance we may discern the extremes of impertinent arrogance and true worth.

367. Another instance of the like impertinence was acted in the making Sir Robert Wright a judge. He was of a good family settled near Thetford in Suffolk and, when he was young, he married one of the daughters of Dr. Wren, Bishop of Ely. He came up in his practice together with his lordship; and they went the Norfolk circuit together. Wright had more business for many circuits than his lordship had. He was a comely person, airy and flourishing, both in his habits and way of living; and his relation Wren (being a powerful man in those parts) set him in credit in the country: but withal, he was so poor a lawyer that he could not give an opinion on a written case, but used to bring such cases as came to him to his friend Mr. North, and he wrote the opinion on a paper, and the lawyer copied it and signed under the case as if it had been his own. It ran so low with him that, when Mr. North was at London, he sent up his cases to him and had opinions returned by the post; and, in the mean time, he put off his clients upon pretence of taking more serious consideration. One cannot conceive that this man could get much by the law, nor did he; but by favour he was made treasurer to the chest at Chatham and by his voluptuous unthinking course of life he ran in debt, and used frequently to ease himself upon his friend North, by borrowing money at times. The debt at length grew so considerable, that his lordship thought fit to pay off his other debts and take in the mortgage of his estate, which he held charged with £1,500. Afterwards, and not many years before he put in for a judge's place, he borrowed of Sir Walter Plummer £500 upon an original mortgage of the same estate and made an affidavit that it was clear from all incumbrances. Which affidavit Sir Walter Plummer afterwards brought to his lordship, even while the mortgage was in his hands; which amazed him; but he took his money and assigned to Sir Walter Plummer. One would think that this was a competent knowledge of that man's character. But he, being upon the brink of utter

ruin, applied to Jeffries to rescue him by getting him made a judge. When the time came and his lordship was with the king consulting about a fit person, the king said, "My lord, what think you of Serjeant Wright? Why may not he be the man?" His lordship answered that "he knew him but too well and was satisfied he was the most unfit person in England to be made a judge." "Then," said the king, "it must not be;" and so it went off at that time. But Wright still, by his friend Jeffries, pushed his point; and in the interim, worked all he could by most importunate applications and bitter tears, (but for no other reason than that, "if he failed now he was utterly ruined") to gain his lordship to yield that he might be a judge: but to no purpose; his lordship was inflexible: and though he wished the poor man well upon account of old acquaintance, he would not gratify him at the cost of his own breach of duty, or rather, in that respect, perjury. The king took his time more than once to speak to his lord keeper, saying, as before, "Why may not Wright be a judge?" And at last, "Is it impossible, my lord?" his lordship seeing the king's pangs, (for it was plain that this man, by the secret court clan, was determined to be preferred; for he was a creature of Jeffries's, and a tool that would do any thing; and they wanted only the formality of my lord keeper's concurrence to whom the king positively would have a due respect paid) took the freedom to say that the making a judge was his majesty's pleasure and not his choice; that he was bound to put the seal as he commanded whatever the person was; for of that, his majesty was to judge and finally determine. He could but do his duty by informing of his majesty of what he knew to be true; and particularly of this man whom he personally knew to be a dunce and no lawyer; not worth a groat having spent his estate by debauched living; of no truth nor honesty, but guilty of wilful perjury to gain the borrowing of a sum of money: and then he opened more at large the matter of the affidavit. "And now," said the lord keeper, "I have done my duty to your majesty and am ready to obey your majesty's commands in case it be your pleasure that this man shall be a judge." "My lord," said the king, "I thank you;" and went

away; and, soon after, the warrant came, and he was instated.

368. Here was, underhand, a court experiment made whether of the two had the greater power with the king; the lord keeper or the lord chief justice. There was also the vanity of the latter, of which I shall give demonstration. But his lordship was above making contests of that nature. If he had took pet and made a public feud, as most of his enemies expected and also that he would not have endured that the chief justice should tread on his heels at that rate, he might have flown high in expostulations and made somewhat crack, before such time as the king (whose judgment of men was great) would have parted with the best minister in the law that the nation afforded, not knowing where to get another so faithful as well as able and willing, truly to serve him. But, as I said, his lordship was above personal competitions and satisfied himself in having done his duty, with which the making flagrant disputes at court and embroiling the king's affairs did little consist; and some grandee also lay behind the curtain of whose concern his lordship was tender. But now, to show the effects of upstart court vanity, I must here subjoin a passage acted in Westminster-hall. It is the custom of the chief justice and his brethren of the King's Bench, in the morning to robe themselves at a bar below in the hall, before they go up to the court. This is called the side bar; and there they hear the attorneys wrangle about matters of practice. It stands just before the chancery court and in full view of the lord keeper as he sits upon the bench; and the chancery useth to sit long before the judges of the King's Bench come to the hall. After this point of Wright's being a judge or no was determined at Whitehall as I related, the lord chief justice at his side bar seeing Serjeant Wright walking in the hall, extended his arm and beckoned him; and straight, with all the humility and crouching imaginable, the serjeant hasted to him. And then the chief justice only leaned over the bar and compassed the serjeant's shoulders in his arms and, after a whisper in his ear, flung him off from him, holding out his arms some short time in that posture. This was a public declaration that, "in spite of that man

above there," Wright should be a judge. His lordship saw all this, as it was intended he should, and it caused him some melancholy; though not at all as concerning himself or the vanity of the chief justice; but for the nature of the affair and the manner of its proceeding; which he foresaw would have worse turns if so done, as was like to be, in other affairs of larger denominations.

369. I know that many will be apt to inquire how I came to know so particularly these court-dialogues, *tete à tete*, between the king and his minister. I can readily answer, by means lawful enough; as also for more of like nature in the course of this relation; and those who observed my course of life and conversation could make no doubt by what means. Some may also allege that I bring forward circumstances too minute, the greater part of which might be dropped and the relation be more material, and being less incumbered, easier understood and retained. I grant much of that to be true; but I fancy myself a picture-drawer and aiming to give the same image to a spectator as I have of the thing itself which I desire should here be represented. As, for instance a tree, in the picture whereof the leaves and minor branches are very small and confused, and give the artist more pain to describe than the solid trunk and greater branches. But if these small things were left out it would make but a sorry picture of a tree. History is as it were, the portrait or lineament and not a bare index or catalogue of things done; and without the how and the why all history is jejune and unprofitable.

370. There was an odd passage at the council-board, which, for its affinity to what is passed, shall be super-added. The justices of the peace about Stepney and Wapping, had great differences one with another which embroiled the very sessions and hindered the proceeding of the ordinary business of that court. One Smith headed one party, and one Baily another. These two used always to fall foul on one another in public with injurious reflections: and the matter ran so high between them two, that it came before the king and there was a hearing before the council. His lordship saw no reason why the king should be troubled with such squabbles; but if either had received injury he might right himself by the common course of law.

The lord chief justice, it seems, had taken the patronage of one of the parties, I think it was Smith; and being flaming drunk, came up to the other end of the board and (as in that condition his way was) fell to talking and staring like a madman, and at length bitterly inveighed against Trimmers and told the king that he had Trimmers in his court and he would never be easy so long as the Trimmers were there. When he had done, the lord keeper, knowing these darts were intended towards him, stood up and said only, "that he did not apprehend there was so much concern in this business; and my lord chief justice appearing so well informed of it, he moved that his majesty would refer the whole to be examined into by his lordship, and that the parties attend him; and then his lordship making a report of the whole controversy to his majesty in council, he might thereupon order as he should think fit." The parties being thus referred to the chief justice, the scandal continued; but in the end it was so ordered that Baily (as I take it) was undone. I suppose I need not here use many words to interpret the word Trimmer, which was taken up to subdivide the Tory party, of whom all (however loyal and of the established church professed) that did not go into all the lengths of the new high-flown party at court, were so termed. I can place under this passage no better corollary than that all times have their crisis in authority; and no indecencies are so great but some will bear them.

371. His lordship always declined giving any opinion in that branch of royal economy, called foreign affairs. He could not avoid being in the way of the ordinary deliberations of that kind, by reason of his attendance on the usual councils. And although he was for the most part at the committees of the privy council, as for trade and plantations, &c. which might be called English business, he never cared to attend at the committee for foreign affairs. He professed himself, for want of a fit education and study, incompetent to judge at all of those matters. I have heard him say that of all the subjects that he had ever come in the way of to hear debated, he could least bring himself into a satisfactory resolution concerning foreign affairs, even when he was present at councils of that sort; and

then no wonder he declined giving any judgment thereupon. But yet he hath often ventured so far among his friends, as to declare that he thought King Charles II. understood foreign affairs better than all his councils and counsellors put together; for, by reason of his unhappy exile and travels, he had either a personal acquaintance with most eminent statesmen in Europe; or else, from such as could instruct, received their characters on whom the crisis of most courts depended. And this knowledge he perpetually improved by conversing with foreigners as they came over, men of quality and ambassadors, whom he would sift, as being a good judge of their veracity, and serve himself one way or other of their conversation, and possibly drunk as well as sober. And when they thought to sift him who, to give him his due, was but too open, he failed not to make his best of them. It was his lordship's fortune to clear the doubt of a Turkish war contrary to the opinion of all the foreign ministers, by the means of his brother Sir Dudley North, whom for that end he caused to attend the king in council; but this passage hath been accounted for in the *Examen*.¹ I might touch here upon an unhappy difference that fell out between the Earl of Halifax and the Lord Rochester, about the bargain made with the farmers of the excise, which quarrel his lordship had some small share in; but as Sir Dudley was the chief actor therein, I shall leave it to its proper place in that gentleman's life.²

372. His lordship took notice that the king, having had some aguish attacks at Windsor, appeared to be more considerative and grew more sensible of the niceties of state government than he had been before, especially relating to the treasury. He found that to be his sheet-anchor; for the parliament would not always be in a giving humour; and the less if he could not subsist without their help; for that animated his enemies by giving hopes that his necessities would at length reduce him to the state of *carte blanche*. He used to be often present at the treasury, and saw the estimates and dispositions of his ministers in that office,

¹ *Examen*, p. 462, *et seq.*

² For a full account of this transaction, see *Sir John Reresby's Memoirs*, p. 150, *et seq.*; *Burnet's Own Time*, vol. ii. p. 920; and the *Life of Sir Dudley North*.

and what hands were capable to supply what he had seriously in his mind to perform; and particularly the providing for his natural children, and building the new house at Winchester which he thought to be a better air than Windsor. And reason good; for the latter stands on a sharp cliff respecting the north, where all the air of the valley from that quarter pinches upon the castle, as water entering at the great end of a hunting horn passeth through at the lesser end with much more violence and swiftness. His majesty was very much concerned and impatient to have this new building finished, saying, "a year was a great time in his life." And so truly it proved; and the more unhappy because now he was past the gaieties and pleasures to which he had been furiously addicted, and which had almost disabled him as to government. Such supine errors and neglects had he been guilty of; and without a singular penetration and good judgment of men and things, which he was egregiously master of and at fit times exerted, he had been, as his father was, lost. Nay, probably, if his father's example had not been flagrant before his eyes and if, of the two, it had been his chance to have been the earlier subject of the factious practice and thereby, as his father was, surprised into a fond way of trusting persons, in all probability his majesty had not escaped so well as he did. But now he was so timely instructed and also by experience capacitated and, withal, very good-natured and beloved that, had he lived long, his reign had been the most happy and glorious that the English histories could boast of. And whereas some of our barbarous writers call this awaking of the king's genius to a sedulity in his affairs, a growing cruel,¹ because some suffered for notorious treasons, I must interpret their meaning; which is a distaste, because his majesty was not pleased to be undone as his father was; and accordingly, since they failed to wound his person and authority, they fell to wounding his honour. But more of this in the Examen.

373. I am now come to that most funest alteration of

¹ "He had," says Burnet, "an appearance of gentleness in his outward deportment, but he seemed to have no bowels or tenderness in his nature, and *in the end of his life, he became cruel.*" (*Own Time*, vol. ii. p. 1052.)

affairs by the king's sickness and death; of which I shall mention only what took in his lordship and his ministry, leaving the history more at large to the *Examen*. The attack was at the levee, when the room was full and physicians in waiting; and then the king fell back in his chair; with some exclamation as one that dies suddenly. The physician straight bled him in the arm and he recovered a little life and sense, and so was conveyed to his bed where he languished about a week and then expired. The privy council sat almost continually in the next room, and the physicians passed to and fro, as occasion required, to give them satisfaction of the king's case and their methods. His lordship never came from the council but in a profound melancholy; for from the beginning he saw no hopes of his life to continue long. He told us that, observing the discourse of the doctors to run all upon indefinites, what they observed, their method intended and success hoped and the like, he said to them, "That these matters were little satisfaction to the council unless they would declare in the main, what they judged of the king's case; whether his majesty was like to recover or not." But they would never be brought to that; all lay in hopes. But one day they came into the council, and had such cheerful countenances that their lordships thought some good news was at hand. The business was to acquaint their lordships that now all was like to be well, for the king had a fever. At this his lordship started, and "Gentlemen," said he, "what do you mean? Can any thing be worse?" One answered that "now they knew what to do." "And what is that?" replied his lordship. The doctor said, "To give him the cortex." And so they proceeded whilst life lasted. I am not to enter into all the fatal circumstances and libellous reports ventilated abroad upon this dismal incident: but shall touch one, which was that the king's sickness was the effect of poison to make way for the succession. There are many reasons against this to be found in the *Examen*,¹ and therefore shall mention here only what I observed of his lordship which weighs with me as much as any thing; and that is his lordship's never suspecting or mentioning

¹ See *Examen*, p. 648.

such a thing ; as he would have done had there been reason. And if any person about the king, on the Protestant side, had in the least suspected such foul play his lordship would have had an intimation of it ; which I believe he never had ; nor did it enter into his thoughts no more than it appeared in his discourse. But with the death of this good master and sovereign, all his lordship's joys and hopes perished ; and the rest of his life, which lasted not long after, was but a slow dying.

374. It pleased God that the temper of the nation was at this time so universally settled in loyalty (saving only the very dregs of a malevolent party) that there was no apprehension of any disorder either during the king's sickness or after his demise ; but, on the contrary, almost every living soul cried before and at his decease as for the loss of the best friend in the world. The remembrance of which, other notices apart, makes it wonderful to me that have lived into succeeding times, to hear this good king's reign referred to as a touchstone of tyranny. But no more of that. The next work was for the council and great men in and about London to meet and order the proclamation of the successor King James II. which was done the same day ; and then all the great officers waited upon his majesty and rendered their several offices and charges into his majesty's hands, and he returned them back to them again. After this, the proclamation issued to continue all country commissions and authorities whatsoever till farther orders should be taken ; and so in a few hours the government was upon wheels again without any concussion at all ; which succeeded according to the known law of the English monarchy, viz. that the king never dies ; whereof the virtue may be sensible to those who have felt a republic. I remember his lordship told us that a great man of the new court, in a bantering way attacked him ; and "What is the reason," said he, "that you lawyers say the king never dies and we are now considering how to order the king's funeral?" His lordship answered quick "that, by law, it was not the death but demise of the king." Which, by the way, was a law banter back upon him ; and so fools are often answered in their folly. How necessary it is for a courtier to be expert at repartee I may show by one instance. After this demise of

the king and the duke's accession to the throne, the Lord Rochester bore the greatest sway in the court and treasury. His lordship and that lord were once consulting about measures to be taken in preferring men to places of trust and management in offices under the crown : and his lordship was for taking in those who had been bred in the business and had gone through the servile part of the offices and were gradually come up to the station of directing others, as most like to serve profitably ; for none could understand the business better than they. The Lord Rochester was for preferring Tories and High Fliers, whom he called the king's friends, for encouragement of others ; and "G—ds w——ds, my lord," said he, "do you not think I could understand any business in England in a month?" "Yes, my lord," answered the lord keeper, "but I believe you would understand it much better in two months;" which made a full close of the argument.

375. After this happy inauguration of the government, the first great matter that came forward to be wisely determined by his majesty's council and ministry, was to settle the collection of the tonnage and poundage and other duties given by parliament only for the life of King Charles II. and by his demise, in all legal sense, determined : about which the difficulties seemed almost insuperable. The valuable merchants of London came to the commissioners of the customs, and entreated of them that the customs might be gathered as formerly. "Otherwise we," said they, "that have great stocks in our warehouses for which we have paid custom, are undone ; for the unfair traders and runners, and such as come in before the duties are recharged, will undersell us, as they well may paying no custom. There is no doubt but the parliament will give the customs for the whole time ; and why should they not be collected in the mean time?" The commissioners were careful not to do a thing, however reasonable, so obnoxious as that was ; for the levying money of the subject without any law to warrant it, was a case utterly defenceless in parliament ; and they would not stand in the gap to be buffeted in case any members should stir up a charge upon them for so doing. Therefore, designing to disengage the thorn and fix it in the foot of their superiors, they

attended the treasury in a body and made a representation of the request of the citizens, their reasons and the undoubted ill consequences to the king and people if the revenue of the customs was not collected, and prayed their lordships' directions how they should behave themselves in the matter. There sat Lord Godolphin, Sir Dudley North, and other judicious persons commissioners. They saw the intent of these gentlemen, which was to screen themselves by their order ; wherefore, calling them in, they told them that they were his majesty's commissioners for collecting the customs and had all the laws touching the revenue before them ; which laws they would do well to peruse carefully and govern themselves accordingly ; and that was all the answer they could give them. This was cold comfort ; but soon after, the business pressing, the king laid it before the council and demanded their advice what would be the best method for managing this affair. The Lord Chief Justice Jeffries moved that his majesty should cause his royal proclamation to issue, commanding all officers to collect and the subjects to pay the revenue as formerly. My Lord Keeper North was not of opinion that to issue such a proclamation, at this time, would be for the king's service ; because it would have the worst turn that such an affair could take ; that is, giving a direct handle to his majesty's enemies to say, that his majesty at the very entrance upon his government levied money of the subject without act of parliament. There was no doubt but the parliament would renew the act as full as before ; and if the collection might be carried on without such misconstruction, it were better. Therefore he proposed that the proclamation should require the duties to be collected and paid into the Exchequer, and that the officers of the Exchequer should keep the product returned, safe and apart from other revenues, until the next session of parliament, in order to be disposed of according as his majesty and the two houses should think fit. One would have believed this expedient plausible enough and calculated to obviate the ill use a repullullescent faction might make, if the other way was taken. But it seems, this was too low and trimming for the state of the court at that time, and a positive proclamation issued. The temper of the public was, then, so

propitious to the crown, that almost any thing would be borne with which in other times would have raised a flame. All which was owing to the recovery in the predecessor's times, which, as a force impressed, carried the humour deep into the next reign ; though the moving cause was in great measure lost out of men's minds. Thus was the grand revenue, by law precarious, put into a way of being collected and answered by virtue of a direct proclamation.

376. The next great incident was the summoning a parliament ; and accordingly writs issued returnable Feb. 1684-5. All people interested themselves one way or other to procure, or disappoint, elections : and the court was not idle ; his lordship got as many of his friends and relations to be chosen as he could ; in which, besides his own influences, he had the nomination to some of the king's boroughs. Those who came in by his recommendation, were for the most part gentlemen of honour and estates as well as credit in their countries ; such as Sir Henry North,¹ and Sir George Winieve in Suffolk ; Mr. Robert Foley, and others I might name whose memories are respected, in their countries at this very day. And to make the attendance easy to these gentlemen whose concerns were in the country, he took divers of them to rack and manger in his family, where they were entertained while the parliament sat. His lordship's design was to have the parliament truly church of England Protestants, and loyal to the crown ; which character he thought aptest to establish the religion and laws of the kingdom, and to resist all attempts of altering any of our fundamentals in church and state. And he was happy in not seeing it dissolved ; for he died before that happened. It may be his wisdom and foresight might have prevented that fatal stroke. But that was not to be accounted the only state error which his death made way for ; since it is well known how precipitously they flowed in one after another as soon as he was gone. How far his lordship concerned himself to keep the king in a way of using parliaments and for the preserving this, with his reasons, will be shown in a proper place. His principles and resolutions, firm to the national establishment, were so

¹ Of Mildenhall in Suffolk, *ob.* July 5, 1695.

well known at court that he was not trusted in any important step that was made. He considered well, that, at the meeting of this parliament it was his office, and had been formerly the usage of the great seal to declare at large the cause of calling, and the king's pleasure to the parliament; and he had framed a speech¹ to be made at the opening, and calculated it to the happy genius of the assembly as he understood it, tending all to a continuation of settlement

¹ [For the entire justification of his lordship, and in order to demonstrate the sincerity and uprightness of his intentions, I have thought fit to subjoin the speech itself as it was found among his papers. It is as follows :

A speech prepared for opening the parliament 1 Jac. II. in case the king had commanded it, and had not taken the whole upon himself.

My lords and gentlemen,

The causes of summoning every parliament, expressed in his majesty's writs, are certain. The writs by which you are called to attend his majesty for the holding this parliament, express the cause of summons in the usual manner for certain weighty and urgent affairs concerning the king and state, and the defence of his kingdom and the church of England.

If at any time there arise weighty affairs and if at any time they are urgent, it is at the entrance of a king upon his government. For that is the time upon which both king and people make a judgment of their condition. If the beginnings prove auspicious, they give assurance of a serene and happy reign.

It hath pleased Almighty God hitherto to bless his majesty with prosperity. His accession to the throne was calm and peaceable, notwithstanding all the former threats of faction; and the people have not only submitted to him according to their duty, but with great zeal given early demonstration of their affection, by waiting upon him from all parts with addresses and congratulations; and none have departed without entire satisfaction by those gracious expressions of his goodness, which his majesty was pleased to make them.

The coronation was solemnized with an universal joy and acclamation, and had the most numerous and splendid attendance of the nobility that any age hath seen.

Nothing can equal the lustre of it but the solemnizing of this day, when it is truly said the king is seated most high in his estate royal, being attended by his three estates, whose advice and assistance makes him the greatest prince in Europe.

And this day is no less auspicious by the appearance of so many persons of eminent and constant loyalty who have, in all times of difficulty, given abundant testimony that they can never fail the service of the crown.

May the good omens be continued to his majesty, not only in this

of peace and resistance of innovation. In which speech he had employed more of oratory than I ever saw in any thing he had on any other occasion performed. He showed us this speech, being what he was minded to say; but withal,

happy meeting between him and his people but through the whole course of his reign, to make him the greatest and happiest of princes.

If we look back a few years and consider to what distress the crown was brought by the power and insolence of faction, which was grown to that formidable height that it had almost taken possession of the government, had overspread the kingdom, and by its false arts, and the activity of its emissaries, prevailed, not only in the choice of magistrates, but to bring the most violent of their party into the House of Commons, whereby to render parliaments, the most firm and powerful support of the crown, useless.

It was hardly safe to speak in defence of the king whilst treason was talked in the streets and the faction openly provided arms and every day threatened rebellion.

I say, when we look back upon the dark face of those times, and consider the change that hath been wrought in these few years, we must attribute the felicities of this day to the providence of God Almighty, who stilleth the raging of the sea and changeth the hearts of men.

It must be acknowledged to be his doing for it is marvellous in our eyes.

It is he, and he only, that could bring such a sudden confusion and desertion upon the king's enemies by his signal providence in discovering their infernal designs of assassination, massacres, and rebellion; whereby all good men were brought to an utter detestation and abhorrence of them.

When we were newly delivered from this danger it pleased God to deject us by a more sad calamity, in the sudden sickness and death of our late gracious sovereign, under whose merciful reign we had lived in a most happy condition, and upon whose life our peace seemed to depend the faction having openly threatened to fly to arms against his rightful heir.

But it pleased God quickly to dispel our grief, and to raise our drooping spirits, by showing us the same excellencies, the same princely virtues in our most gracious sovereign, and all the assurance our hearts could desire of an happy government.

And at the same time to dispirit the king's enemies, who had maliciously represented the prospect of his reign in the most odious manner they could devise, as a scene of cruelty and all the evils imaginable, so that they saw it in vain to take up their former pretences of being patriots, they thought it more safe to lie hid, knowing themselves odious to the people whom they had so abused by their abominable lies in traducing the best of princes.

Their disappointment, their disgrace, their confusion, will be no small part of their punishment; and may they go on daily from one degree of despair to another. Let them burst with envy to see this happy day,

declared he would not utter a syllable of which he had not the king's allowance at the cabinet council. But the policy of the court was such that all this proved labour in vain. He was not trusted to speak to the parliament, but the king

this happy meeting of the king and his people. Let them see all the mutual endearments that can pass between a most indulgent father of his country, and a most loyal parliament.

His majesty hath this day already done his part towards it by his gracious expressions of so much tenderness for his subjects, so much care of those things that are most dear to them, their religion and their laws.

And I dare say there will be no failure on your parts to complete this good correspondence, by making a steady and public demonstration of that duty and affection which is in your hearts.

You may look upon the gracious promises you but now received from his majesty as concessions made in full parliament, as laws which his majesty hath given himself, which will be more binding and effectual than any that can be proposed to him.

Never therefore let our church of England, fear to want support, when he hath said he will defend it. Never let any man entertain the least jealousy of arbitrary government, when his majesty hath declared against it.

What suitable return can we make for so much goodness? Let us give him fresh and powerful instances of our loyalty, that may confirm the good opinion he hath expressed of his church of England. That may make him love parliaments, and redeem that credit which the violence and unreasonableness of the commons have of late impaired.

Let us show to all the world that we love our king, that we trust him, that we shall never be wanting to his service. This will deter all unquiet spirits at home from troubling our peace, and will give his majesty that reputation in foreign parts, that will make him arbiter of the affairs of Christendom; an honour the people of England always desired their princes should have.

My lords and gentlemen,

The summer advanceth so fast, that you may be in some pain to think that you cannot have time to bring to perfection those things which may be needful, and you should do for the king's service. I would therefore recommend to you to take up those things which are most plain and easy of dispatch, which is to look into those laws which are expired of late; laws ready drawn, already put in practice, (it will be a short work,) such of them as you have found useful.

But your first and chief care ought to be of those laws which concern the king's revenue; by the continuance whereof, you will establish him in the same condition with the late king, in whose throne it has pleased God to place him.

There are other laws expired which were of public consideration for maintaining the peace, and suppressing sedition, which will deserve your

took it all upon himself; and he made his own speech; at least the lord keeper had no hand in it. For he was not so much as consulted about either the matter or expressions the king intended to use; as one may well judge by the unguarded tenor of it. The private consult knew that his lordship could not forebear commending and recommending what of the constitution they designed to alter.

377. When the parliament was met and qualified to do any business, all the revenue matters were dispatched to the king's content, and a supply was given of a half-penny per pound upon tobacco and a farthing upon sugars; very small with respect to what hath been given since; but it made a greater stir and had more opposition in parliament than any later revenue or supply bill ever had; and, upon voting the supply and charging it so to be levied, it was cried out upon as if it had been a surrender of liberty and property. "For," said some, "we shall enable the king to raise and pay an army to enslave us: doth he not talk of his armies in his speech?" And the merchants, who for the most part chimed in with those opposers, declared the trade would be clogged and ruined. The grocers declared they would throw up and not deal in those commodities:

particular regard. Though, God be thanked, faction is now low, and out of countenance, we must not despise it so as to neglect to make wholesome provisions against it. We may be sure it will begin to creep again upon the least warmth, and will lose no opportunity of troubling our peace. We ought therefore to keep a watchful eye over it.

And above all things, we ought to be careful that it gain no footing within these walls, by creating divisions amongst us, or reviving that absurd distinction between the court and the country party; as if the king's and his people's true interest were not the same.

Let it be always a maxim in parliament, that what is given for the support of the king and his government, is bestowed for the people's benefit; and that proposing laws for the convenience of the people, is a service to the crown. And therefore you may assure yourselves that what bills you shall prepare and tender to his majesty for the advancement of trade, the easy and speedy administration of justice, detecting frauds, suppressing enormous crimes, or any other matters that conduce to the happiness or ease of the king's subjects, will receive a most gracious answer.

For it will always be the interest of the king, that his subjects should live happily; and the greatness and prosperity of the king will always be the safety and satisfaction of the people.

I have it farther in command, &c.]

insomuch that my Lord Rochester was frightened and was inclined to fall off from this, and to busk for some other way to raise the supply. It seems that, to answer these clamours, the tax was so qualified that it must needs lie upon the inland consumption only and not affect the exportation; and for that end, a drawback of the duty was given upon all tobacco and sugars exported. This did not satisfy; and the traders clamoured no grain the less; and when men look grave and object, though without reason, folks are apt to think them in earnest. On the other side, Sir Dudley North, a commissioner of the treasury, who managed for the king in the House of Commons, and other intelligent merchants, told the Lord Rochester that all this noise was knavery and there was nothing in it; and, at a meeting of the grocers at my Lord Rochester's, made it plainly appear to be so; as will be showed more particularly in the course of that gentleman's life.

378. The first overture of setting up the dispensing power, was in this first sessions of the parliament; for the word *army*, in the speech, gave great offence. But what gave more was an attempt to indulge the military officers to act without qualifying themselves according to the test laws.¹ By this attempt in parliament and other more private prognostics, his lordship perceived a disposition in the interior court, to decline parliaments and rely upon an army; for which deliberation they had but too much encouragement by Monmouth's rebellion which broke out during this first session of parliament. The loyal and honest temper of the parliament, appeared in nothing more than in their behaviour in this point. After much debating, they showed a disposition, by a particular law, to qualify any persons the king should in particular nominate to them: But that would not be accepted; which on the one side was a great oversight, and on the other a great escape; for the members had incurred no little infamy abroad, by consenting to enact even so much as that was. And as for a general qualification, that is a repeal of the test and penal laws in military cases, it would by no means be agreed to: and upon that point in the end the parlia-

¹ See Hallam's *Constitutional History*, chap. xiv.

ment was broke; as the accounts of the closetting,¹ afterwards make plain. I have no more to relate of this parliament: in which his lordship presided as speaker upon the woolsack, an employ mostly taken up with forms. Only the business of appeals from some of his decrees was fastidious; because Jeffries affected to let fly at them, as if he would have it thought that he was fitter to be chancellor. During this session of parliament Monmouth landed,² and all the acts that could be thought of significant against him were passed; as attainders, &c. After he was beaten at Sedgmoor the Lord Chief Justice Jeffries performed his memorable expedition in the West, armed not only with a commission of Oyer and Terminer but also an authority to command the forces in chief, as general of the West; for so he was styled. Upon the news returned of his violent proceeding, his lordship saw the king would be a great sufferer thereby and went directly to the king and moved him to put a stop to the fury, which was in no respect for his service; but in many respects for the contrary. For though the executions were by law just, yet never were the deluded people all capitally punished; and it would be accounted a carnage and not law or justice: and thereupon, orders went to mitigate the proceeding; but what effect followed I know not. I am sure of his lordship's intercession to the king on this occasion, being told it at the very time by himself.³

¹ The judges were commanded, during their circuits, to ascertain the dispositions of the members of parliament with whom they should happen to meet. (*Sir John Reresby's Memoirs*, p. 239.)

² Monmouth landed at Lyme, 11th June, 1685. The battle of Sedgmoor was fought on the 6th July.

³ It has been observed that North is not correct in his statement of this transaction. (See *Ralph*, vol. i. p. 893, *note*; and *Howell's State Trials*, vol. ii. p. 303.) The lord keeper died, according to Ralph and Collins (vol. iv. p. 342, ed. 1735), on the 5th September, 1685; and this account is corroborated by Roger North (*ante*, § 4); and by Evelyn, who, under the head of the 6th September, says, "About six o'clock, came Sir Dudley, and his brother Roger North, and brought the great seal from my lord keeper, who died *the day before*, at his house in Bedfordshire. The king went immediately to council; every body guessing who was most likely to succeed this great officer: most believed it would be no other than my Lord Chief Justice Jeffries, who had so rigorously prosecuted the late rebels, and was now gone the western circuit, to

379. At this time, the solemn coronation of the king and queen was promulged; ¹ a committee of council to settle the formulary and a court of claims erected by commission; in which his lordship, as chief, gave the rule. At the former, the Archbishop of Canterbury ² and his lordship had some difference. The archbishop, as the council thought, spun too fine; for that was his way; and he would not abate one scruple of what he thought his duty which made them think he trifled; and my Lord Halifax said his name should be *Sede Vacante*. However all ended smooth and well. And here I must introduce a dismal catastrophe; which was his lordship's sickness and death. All these loads of the death of King Charles II. the managing in order to the coronation and the parliament, and sitting there to hear his decrees most brutishly and effrontuously arraigned, which he must defend with all the criticism and reason as well as temper that he could, by stress of thought muster; besides the attendances at court and council, where nothing squared with his schemes, and where he was, by Sunderland, Jeffries, and their complices, little less than derided; to all which the dispatch of the chancery business is to be added, where, for want of time, all run in arrear; which state of the court was always a load upon his spirits:—all this was more than enough to oppress the soul of an honest cordial man; and I verily believe it did that to his lordship which people mean when they say that “his heart was broke;”

punish the rest that were secured in the several counties, and was now near upon his return.” (*Memoirs*, vol. i. p. 569.) Roger Coke also expressly says that the lord keeper died “when Jeffries was in his march in the West.” (*Detection*, vol. ii. p. 434.) Now it was not until the beginning of September, that Jeffries (to use the words of Ralph) “hoisted his bloody flag, and made it appear that he resolved to give no quarter.” The commission, according to the same author, being opened at Dorchester, whither the bulk of the prisoners had been conveyed on the 3rd of September, the statement in the text cannot, it should seem, be correct.

¹ This coronation was performed with great magnificence [23rd April, 1685]. Burnet tells us that the king was “for some weeks so entirely possessed with preparations for that solemnity, that all business was laid aside, and nothing but ceremony thought on.” (*Own Time*, vol. iii. p. 107.)

² Dr. Sancroft, the first of the seven bishops.

but I guess that with him it was rather his head than his heart. Some time before the parliament rose, I had notice brought me in the morning that my lord keeper was taken desperately ill. I got ready as soon as I could and, coming into his chamber and to his bed-side, he looked at me and said, "Will you believe I am ill now?" I was one that used to rally him upon his fancies as to health, as if he ailed nothing; and truly, for the most part, I was in the right; for he was inclined to the splenetic. But now it was plain he was in a very bad case. He was taken in the night with a very bad cold, that obstructed all the passages on one side of his head, and he had very great pains there, and withal a fever. The afternoon before he was not well, but made no show of it. The barber trimmed him and, being uneasy, he thought he never would have done; and the image in his dream, at the accession, was of the barber's hand patting his cheek with cold water till it was numb. And after he was awake, that thought stuck in his mind and he could never shake it off as long as he lived, which was not above four months after: and he would often inveigh against the barber's impertinence, which he sincerely thought gave him his cold. Let all that reflect on non-sanity of mind, observe that it hath its degrees and importances and that corporal inflictions shall impress ideas which shall ever after remain involuntary: if about trivial things they are conceit and fancy; if important madness. For in the extremity of fatuitous madness there is nothing to be found but the consequences of error and credulity, by what means soever, whether pride, fright, fever, love, &c. impressed at first. But, to return to his lordship, his family physician, Dr. Masters (who was bred under Dr. Willis, and introduced by him) was sent for; and he ordered phlebotomy and, having directed his diet, expected what turns the distemper would take, and watched him carefully and continually in order to farther prescription as reason might require. And thus the man might have had fair play for his life; for who is exempt from fevers? and it is but some, not all that have them, die. Thus he lay restless, under a burning acute fever without any notable remissions and no intermissions. This dangerous sickness of the lord keeper being known about

town, all the accustomed impertinences of messages and visits were acted, but kept from the sick man to whom they were of small profit. There were some relations, and particularly Sir William Soams¹ a sort of brother-in-law, who were much concerned about his physician; he was too plain a man and not in top practice and but one: and it was absolutely necessary that some other famed doctor should be called in, saying, "A man of his lordship's distinction ought not to be trusted with one physician." People will ever be fond of doctors, as Popish zealots are of saints, and think that the power of life and death is in their hands. Whereas generally the practice is common to all; and, when they swerve and are singular, it is as much for death as preservation. But hereupon Dr. Short was sent for who, finding his lordship in an acute fever, approved of what had been done and, to qualify his prescription, said "that a man of his value was not to be trusted with a fever." So to work he went with his cortex to take it off; and it was so done; but his lordship continued to have his head-ache and want of sleep. They gave him quieting potions, as they called them, which were opiates to make him sleep; but he ranted and renounced them as his greatest tormentors, saying "that they thought all was well if he did not kick off the clothes and his servant had his natural rest; but all that while he had axes and hammers and fireworks in his head, which he could not bear." All these were very bad signs; but yet he seemed to mend considerably; and no wonder, his fever being taken off by the cortex.

380. All this while the parliament was sitting and the business of the coronation attended his coming abroad, and he, having an impulse in his nature to dispatch whatever belonged to him to do, ventured out before he was in any competent manner healthful; and sat in parliament, dispatched all the claims, attended the council and the committee for the coronation, and did what he could in the Chancery, and, what was more, paid his last duty to his master in walking at the coronation. And, as an instance of his lordship's caution in great matters, I must here

¹ See § 257, n.

take notice that he had his majesty's sign manual to order his not publishing a general pardon; which, sometimes, men have thought belonged to the great seal to do of course. During these employments, every one that saw him said he went about as a ghost with the visage of death upon him. Such a sunk, spiritless countenance he had. And yet his strength of mind carried him through all; and his bearing the long fatigue of the coronation ceremony and walk was really a wonder. Nor had it been strange if one, with mortal wounds upon him as he had, had dropped in the piazza. During all this time his appetite was gone, and cookeries were provided in order to tempt his palate; but all was chip. We made his evenings as comfortable by society as we could with such news as the town afforded and all kinds of familiar chat, which was his greatest delight when he was well. He found his spirits low and thought to favour and erect them by a glass or two of sherry, or Sandwich ale, after his no-supper. But the case of his fever was this: the rage of the disease, which was the effort of nature to throw off the venom that caused it, was taken down by the cortex; but the venom, then afloat, was let sink into his constitution: and it is now found that, without there be an intermission of the fever, the cortex doth but ingraft the venom to shoot out again more perniciously. And so, in his lordship's case, he had a seed of a malignant fever in him which turned to a malignant cachexy, kindling and burning in the centre of his very vitals, making little show but in his pulse, and a general pain and continual uneasiness, languor, and want of sleep.

381. While his lordship went about in this disconsolate state, it is easy to be conceived how little of comfort was his portion. He had no glimpse of satisfaction in the prospect of future events as to the nation at large (and how much he laid that to heart will be made appear afterwards), concerning which he had no fair expectation but what terminated in himself: viz. that, after having done the utmost that lay in his power to do to obviate the impending mischiefs, he might hope to have delivered his own soul. And his feverish disease growing upon him, his spirits and all that should buoy a man up under oppres-

sion, not only failed, but other things of a malign complexion succeeded to bring him lower: which may be fully understood by this circumstance. He took a fancy that he looked out of countenance, as he termed it, that is, as one ashamed or as if he had done ill and not with that face of authority as he used to bear: and for that reason, when he went into Westminster-Hall in the summer term, he used to take nosegays of flowers to hold before his face that people might not discern his dejection; and once in private, having told me this fancy, he asked me if I did not perceive it. I answered him, not in the least; nor did I believe any one else did observe any such thing: but that he was not well in health as he used to be was plain enough. His lordship in this state, took a resolution to quit the great seal, and went to my Lord Rochester to intercede with his majesty to accept it; which had been no hard matter to obtain. But that noble lord had no mind to part with such a screen, and at that time (as he told me himself) he diverted him. But his lordship persisted, as will be made appear afterwards by a letter. Whereupon the Lord Rochester obtained of the king that his lordship might retire with the seal into the country, and that the officers with their concerns should attend him there, in hopes that, by the use of the waters and fresh air, he might recover his health against next winter; when it was hoped he would return perfectly recovered. This was indeed a royal condescension, and singular favour to him.

382. During this mixture of disease and business in town, there was no want of physicians to attend upon and prescribe to him. They found he had a lent fever which was growing up out of the dregs which the cortex had left; and if it were not taken off, they knew he would soon perish. So they plied him with new doses of the same, under the name of cordial powders, whereof the quantity he took is scarce credible; but they would not touch his fever any more than so much powder of post. And still he grew worse and worse; no means would restore him any appetite. At length, the doctors threw up and said their medicaments had no effect and his blood afforded him no kind of nourishment; and he had no way left but to repair to his seat at Wroxtton, which was near to Astrop

Wells,¹ and drink those waters, which they hoped would cleanse his blood and restore his decayed spirits. After this sentence pronounced, we straight packed up our alls and made as full a family of relations as we could to divert him. The family physician went with us, and he had his chests of medicines as if we were going a voyage to the Indies. We that rode in the coach with him had a melancholy journey; for he was hopeless of life to continue long and of any comfort while it did continue, and declared expressly that this was to be his last journey. There were pillows and all contrivances that he might be easy. He complained of no inconvenience in the journey by jogging and tossing, though he could not but feel a great deal; but his patience was extraordinary; and, as he had resolved beforehand, he made the same stages he formerly had been used to. We had a great rout attending, that belong to the seal, a six-clerk, under-clerks, wax-men, &c., who made a good hand of it, being allowed travelling charges out of the hanaper; and yet ate and drank in his lordship's house. I must own that, bating his lordship's illness, (which was bitterness with a witness) I never was in a more agreeable family. For it was full as a city, and with persons of good value and conversation; all under the authority of one whom all revered; and, out of decency as well as respect to him, not the least intemperance or disorder of any sort committed. And what crowned all, was first, the chief table almost filled with the dearest of his lordship's relations, and the hopes that sometimes were afforded us in the country of his lordship's recovery.

383. The gentlemen of the country were very humane and obliging; for they all came and dined with him and, with deference to his ease, invited him. But his regimen permitted him to go no where; nor did his relations make many excursions: but some he obliged them to, for excuse for himself, where he had great respects. He took the waters in bed, for they did not agree with him up, and in a week or fortnight's time his urine, before disordered,

¹ Astrop, or East Throp, near King's Sutton, in Northamptonshire. The medicinal qualities of the water at this place, had been lately discovered by the celebrated Dr. Lower. (*Wood's Ath. Ox. (Bliss)*, vol. iv. p. 297.)

was rectified; and he had some appetite. Some of us would be saying to the doctor that there was an apparent amendment; but he used to shake his head and put his hand to his wrist; and once, in plain terms, told us that till he found amendment there he had no hopes. I passed as many hours alone with him as any one, and after his old wont he would speak his very thoughts to me; and, when he reasoned wrong concerning himself I took the freedom to argue, as I thought, right. As in this instance: he said his physician was extremely to blame, who was so much in his company and did not put him under some regimen as might have prevented such a fever as this was. "Nay," said he, "he should have forced me to it and not let me alone till I conformed." I excused the doctor, and wished he would consider that he must know how averse he was to all medicinal regimen and physic, and if the doctor had obtruded any such he must have expected an authoritative rebuke; "and he would have feared incurring thereby the loss of your good opinion." This and such freedoms he took in good part. Our course was, in the morning to attend his lordship in his chamber with merry entertainment while he was drinking his waters; and then being up, we that took the post of being his architects, fell to measuring, mapping, and debating about our projects concerning his gardens, buildings, and plantations: and I cannot pass by a diverting passage,—one Mr. Barber, a neighbour, observed how busy we were; and coming near to us where his lordship stood, "You may measure and measure," said he, "but my lord is not such a fool as to be ruled by you." His lordship, who had scarce laughed since he came down, could not hold at that. But we were reconciled to him after that, at the table, he had told a fine lady that "he had known her a heart-breaker for above twenty years." It was very observable that our proceedings discovered plainly when his lordship thought well of himself and when not; for, if he was in good heart and thought he might recover, then he observed us narrowly and would put in his oar, and like or dislike, joining in the very much altercation amongst us as if he were a party concerned. But if he thought he could not get off, then he left us to ourselves and made no inquiry or question at

all upon what we were doing, and scarce would give attention when we showed him our draughts. I remember I had laid out the plantation of his avenue, which was a wretched position ; for the entrance was at one corner and not in the straight. I had shaped a demilune before the court-gate, and at the farther end a whole sweep with rows detached from that to the entrance. He put out my whole sweep, and ordered the rows of trees to be refracted that way. At which I was very angry and declared that no architect was ever so used as I was. This pleased him much ; and he very often made a jest to his company of this rant of his architect. These were harmless amusements and beneficial to him, as much as any thing might be. After dinner the coaches were usually got ready, and with his nearest relations, among whom I was always one, he used to go to Edgehill to take the air : but I did not perceive any great gusto he had in it ; but it was advised and that was enough. I once encouraged him to use the viol and I would make a small concert to him, and he seemed to approve of the entertainment which used to be his idol. I thereupon tuned up a lyra viol and a violin, and, having got some agreeable compositions, to work we went. The doctor eyed us well foreseeing what would follow ; which was, that his lordship scarce touched above a lesson before he laid down the instrument, saying, " He did not like that part, and the other he did not perform." He began to be much concerned about his chair and not satisfied with any ; but one above the rest, which he used most, was privileged, and no one else offered to use it ; for, as sick as he was, he would suffer none to rise and give way for him. Thus, with various amusements, the heavy time day after day was got off hand, as well as with all the satisfaction to him that we could contrive. O what a difference between his own family, friends, and relations, and the court !

384. One thing was very remarkable in this slow declining. All that was peculiarly good in his humour left him. He concerned himself strangely about his economy and the abuses of it, and every thing should be new-modelled and his family reduced ; and he, that was never so well as when his house and table were full, began

to look upon us as inmates, and would needs go out and take an account of his stables; and, coming into one that had four coach-horses in it, he asked whose stable that was? They told him, Mr. Foley's. (He was a brother-in-law, who with his wife, his lordship's sister, had been long in the family.¹) He had enough, and inquired no farther; only, as he returned, "Mr. Foley's?" said he; "Very fine, indeed!" But, with all this discourse of regulations, he ordered no one thing otherwise than before; and the same loose house-keeping went on. And this decay of good-humour with his decay of strength, increased to the last moment of his life; as will appear more express in the sequel. This may serve to demonstrate that mortal sickness is not found to be a time apt for friendly charity and good-nature.

385. About the latter end of August, Sir Dudley North and I were in the coach with him taking the air; and he was pleased to say that he had a will by him and divers codicils, which he had made to suit the emergencies in his family as they had happened; and all these he would put into my hands and I should frame them all into one entire form of a will which he would publish, and the others should be revoked. This was the first word he spoke of any will; and none of us thought fit to mention any such thing to him. Next day he gave me his papers and I made a draught which he approved of, without the change of one word; for indeed I used no words but what were his own, saving for mere form. This will he directed to be wrote sheet-wise, and to be ready when he called for it; which was accordingly done. Now the late time of the year for water-drinking was come; and either the waters had not that virtue to dilute and inspirit his blood as before, or else the doctor and his corresponding brethren in London, thought fit he should leave off drinking them; and after that he tumbled down apace. The doctor always used to shake his head at his urine, saying it was *similis sani* or like to that of one that was well. But now it had a red cast as if some drops of blood were mixed with it; which was a sure prognostic of death approach-

¹ Robert Foley. See Preface, § 6.

ing. Once his urine stood in his view as he lay in bed, and the doctor, frowning at the water, bid somebody take it away. "No, let it alone," said his lordship, "I know (or feel) more than that shows." When he was confined to his bed he called for his will, which I brought; but he thought the sheets were too many and that he should not have strength to sign them all, and ordered one closer to be made; which I went about and had done in less than half an hour; and, after it was read to him and seals prepared, he signed every sheet and published it. And "Now," said he, "I am at ease."

386. We had chaplains in the house and constant prayers in a small chapel, morning and evening, for the family; as ought to be in every great man's house to say nothing of the lesser: and, after his lordship was confined to his bed so that he could not come to the chapel, the visitation services were used in his chamber, and at length he received the sacrament with his relations by him; and then he was in a very desperate way not like to live many hours. It was the opinion of the people about him, and the doctor's desire (who was the most afflicted man in the world) that Dr. Radcliffe,¹ then in the neighbourhood, should be called in; which was done, not that his friends expected any benefit but to satisfy some of the living who would not be convinced. The doctor came and, by his lordship's bed-side, he asked him, I am sure, no less than fifty questions; which was a great fatigue and trouble to him and all that were in the room. The doctor had his fee but not the ingenuity to say what he knew, viz. that there were no hopes, but talked of lungs being touched or not, which signified nothing. His lordship afterwards showed much discontent that he was not well attended; and if Sir Dudley North or I was absent, he called it slighting him; and we were indeed glad sometimes to escape for half an hour to breathe. This confirmed the approach of death, of which the not caring to be left alone is a constant symptom. He began to agonize and be convulsed and, by virtue of the doctor's

¹ The celebrated physician, Dr. John Radcliffe, concerning whom see *Munk's Roll of the Royal College of Physicians*, vol. i. p. 421.

cordials, lived longer than was for his good. After some striving he would lie down, and then get up again. He advised us not to mourn for him yet commended an old maid-servant for her good will, that said, "As long as there is life, there is hope." At length, having strove a little to rise, he said, "It would not do;" and then, with patience and resignation, lay down for good and all and expired, Sept. 1685. And about five or six days after, his funerals were solemnized as he had directed by his will.

387. In a few hours after his lordship's eyes were closed and his will known in the family, which appointed his brothers to be his executors, all the officers of the seal then in the house, after having laid their wise heads together, came in a body to know what the pleasure of the executors was touching the great seal; as if that had been a matter in danger of being overseen. The executors immediately ordered them all to be ready the next morning to go along with it to Windsor, where the king then was; and the state equipage being made ready for the executors themselves, they took the strong box, in which the seal was kept, and that inclosed in a silk bag, which was also sealed with his lordship's seal. Such a sacred thing is that pestiferous lump of metal! The same night the executors arrived they waited upon the king, who said, "He heard that his lordship was much mended." The seal was delivered in the bag (sealed) into the king's own hand, who took the bag and asked if there was never a purse (of state), and it was answered that none was brought down. The king said no more to them; whereupon the executors retired; and, as had been long before projected, the great seal was put into the Lord Jeffries's hands, with the style of Lord High Chancellor of England. And what effect that transition had upon the state and welfare of England, let the succeeding times speak.

388. His lordship used to be continually pestered with penny post letters, impertinent, and fastidious to read over. Against this disease he found an effectual remedy; which was by appointing all such letters to be carried to the faithfullest of his servants and seal-bearer; and ordering him to open and read them, and thereupon to judge if they were fit for him to see and then show, else to burn them.

This immediately put a stop to that evil. It had been usual heretofore, for all writs to bear test where the lord keeper resided, though the king was not there; which was looked upon as a mark of honour to their families upon record. But his lordship, thinking it a mere vanity, ordered none to bear test *apud Wroxton*, but *apud Westmonasterium* only.

389. His lordship became extremely fond of the public records, and promoted the study and inspection of them all he could. At the beginning of his business he had no means of application that way. The books of the law were the field from whence his harvest accrued: and the learning of records is speculative, and tends to the accomplishment of a lawyer more than his direct profit. But it is a most reasonable ambition and was first seen in Mr. Noy. The Lord Coke took a little that way; but his skill was more pedantic than penetrant. Afterwards, a set of men grew up who addicted themselves to that study with less ostentation; as Rolls,¹ Windham, Jones, Glin, and Hales; more especially the latter.² When his lordship began to be at ease in his seat of chief justice he looked earnestly that way, but had not a full accommodation till he had the great seal; and then, by means of his authority, he could command copies of what he thought fit; and accordingly, he had procured all the rolls of parliament and was proceeding with the journals of the House of Lords and indexes of the various sorts, that he might send for what he had a mind to consult. He could not pursue this study before he was made chief justice, because, when attorney-general, all his time was devoured by the king's business and a mountainous practice in Westminster-hall and elsewhere. But, from that time, he dated a sort of liberty in which state he might enjoy himself by pursuing subjects as his fancy prompted; and towards the end of his law

¹ Henry Rolle, appointed Chief Justice of the Upper Bench by the parliament in 1648; surrendered his office in May, 1655. Wadham Wyndham, made a Judge of the King's Bench, 24 November, 1660. Sir Thomas Jones, made a Judge of the King's Bench, 13 April, 1675. John Glynn, appointed Chief Justice of the Upper Bench in 1656.

² Even while a student, Sir M. Hale "was very diligent in searching records."—(*Life by Burnet*, p. 11.)

and the beginning of equity, he scarce minded, seriously, any thing else; and, from dealing with books and epitomes, such as Ryley and Cotton, &c. he came to the records themselves, especially those of the parliament; and he had no sooner a power to command the officers, but he obliged them to transcribe for him all those which are properly called "the Records of Parliament;" which compose about fifteen volumes in folio. Those were brought him, attested by the officer: and he continually called for more; whereof the sheets, which make up a great part of another volume, were left by him not complete. When a question bore upon the records of any sort, he always had true copies brought him; for he did not settle in himself any opinion till he had viewed the original authority. He was procuring all the journal-books of the House of Lords (which begun about Hen. VIII. when statute rolls entered) and had some volumes complete.¹ And all these compacted volumes now remain with the Lord Guilford. As for the journal-books, he immediately made his chaplain make extracts of them under heads that he might have a ready recourse to speeches, addresses, answers, &c. But the old records were French, too hard for them; and those he intended to abstract, or rather epitomise, with his own hand, and had made a beginning. It appears that he had designed, out of those and all other our records and histories, to remark the various contemporary acts and to note his own observations of the times as he went along. And, as a fruit of this study, he had begun to compose a history of parliaments. And I cannot but lament that it was not completed. He found that the factious lawyers, and particularly Mr. P. Foley,² were very busy in ferreting the musty old repositories, with design to produce in parliament what they thought fit, to the prejudice of the crown and its just prerogatives. And they accordingly did

¹ The expense of procuring these transcripts was very great at this period. Evelyn tells us that Lord Essex assured him that the transcribing and binding of the parliament rolls and journals had cost him £500.—(*Memoirs*, vol. i. p. 486.)

² Mr. Paul Foley, called by Burnet "a learned, but not a practising lawyer; a man of virtue and good principles, but morose and wilful." He was chosen speaker of the House of Commons in 1695. (Cf. § 223.)

so; for they conferred with the bellwethers of the party in the House of Commons, and frequently alleged passages in the records of parliament and certain exotic cases, extracted chiefly from those in irregular times, when the crown had been distressed and imposed upon; and done not only partially but often untruly, and always defective. By which means they sustained their anti-monarchic insinuations and pamphlets. The other party were not so well able to deal with them at these weapons, because they were not so industrious. His lordship, upon good information, taken partly from some of their own collections and from Mr. Ryley's *Placit. Parl.* and Sir Robert Cotton's *Abridgment* and other opportunities, was clearly of opinion that a public view of all the records of state and parliament would be for the advantage of the monarchy; for what these gentlemen produced was partial and mistated; and the same, set entirely in open view, would have another tenor and effect. Therefore he was clearly of opinion that the whole should be made public in print: and by that the crown would have more justice; for men who had been imposed on and had credited the others, having access to the books of the records, might rightly inform themselves by means of their application and study, which they could not do by searching the offices; a drudgery for which only a few are competent. And, pursuant to this design, his lordship actually began to put the huge mass into some order and method, to be proposed to undertakers who were to have encouragements that might invite them. But this work required long and quiet times; neither of which fell to his lordship's share after he had the great seal, by which only he was capable of forwarding the work.

390. His lordship's ministry under King James II. was less difficult but more mortifying than under King Charles II.; for then, all the weight of forms and legalities and consequently the warding against cavil and captiousness, lay upon him. He was relied upon, and, being obnoxious to all dissenting parties, must act at his peril. But now, as he was a person determined to be laid aside, he was not relied upon in any thing but was truly a seal keeper rather than a minister of state, and kept on for dispatch of the formularies rather than for advice or trust.

It was well known that he would not put the seals to any commissions to persons unqualifiable, with a *non obstante* to the test laws; and for that reason none such were brought to him; but after he was gone, his successor (by antecedent compact, as was supposed) passed all. His lordship was so ill used at court by the Earl of Sunderland, Jeffries, and their sub-sycophants, that I am persuaded if he had had less pride of heart he had been tempted to have delivered up the seal in full health. But he cared not to gratify by that such disingenuous enemies. Another weightier reason kept him in awe as to that; which was point of honour: for he would not willingly have cast such a public reflection upon his royal master and his government, as the desperate *innuendo* of such an action had been. He intended to stay till the king would bear him no longer, and then make it his majesty's own act to remove him. His lordship owed his first promotion, by being made the king's counsel at law, to the favour of his majesty when Duke of York; and in the whole course of his rising the duke was his friend: and at this time, amongst such a circle of sycophants as were about the king, without a singular tenderness of his majesty towards him he must needs have been disgraced over and over. But the king believed him to be an honest man and always a friend to his succession and to the monarchy itself, and of ability to make good all his undertakings; that his learning and elocution, as also his exquisite caution as well as his readiness at foresight and defence, made him an admirable minister. What he thought or did adverse to the king's purposes, was indulged upon account it was his real opinion, and, being an honest man, he could not do otherwise. But, besides all this, what in a particular manner supported him was his credit among the loyalists; which was so great that to part with him abruptly, and (as intended) to make way for such a one as Jeffries, would make no slight shock in men's minds; and as the situation of his affairs was, in that recent administration of the public, would turn to no good account. The attorney and solicitor-general were shaped out already to serve any turn of projection for applying the great seal; and Jeffries at hand, if he could by all his arts and rudenesses make his

lordship resign, or be turned out, then to seize his post. And herein his lordship esteemed he had a protection, and said, that if any thing made him the least desirous not to quit the seal it was that, by parting, he might not gratify those who indecently or for pestilent aims sought it. But it is an ill game that hath not one trump. The Lord Rochester, who now had the treasurer's staff, desired by all means to keep his lordship in place, because his skill, credit, and authority served by way of screen to divert divers malign influences from falling upon him, and what pains he took therein will appear afterwards. No enemy at court ever ventured to charge him with any immorality. I do not know that in all his life he swore an oath. But littleness and incapacity was the worst they said, or (in that region) endeavoured to have thought of him. His opposing the innovations of the popish party was out of principle, as what he thought best for king and people. But he was never officious to torment them or make them uneasy, if they would live at peace and be at quiet; and his engagements against them were all defensive. The king knew all this, and therefore was as tender of affronting him as he was of disobliging his majesty, or putting it in the power of any one to say he ever did an undutiful or ungrateful act; much less flying in his majesty's face, taking part with his enemies, as certainly had been the court language of him if he had delivered up the seals in full health. And upon these terms, as I take it, hung the great affair of the lord keeper's holding or going out in that reign.

391. But not to part with his lordship without a due account of his nearer comportment with his majesty upon the subject of the new methods which his lordship saw to be furiously entering at court; which account being not only for his vindication, but for his lasting honour I must observe, that Monmouth's landing gave too fair an occasion for the king's raising forces to suppress that rebellion, as was happily done. But afterwards, the king, partly from his own humour which might affect other braveries and partly from the fears and consequently treachery of his ministers, who thought themselves not safe in what they had done or intended to do but upon the foot of force,

kept up the army, although there appeared no real occasion, or reason, for so doing. This created discontent enough; but, what was worse, the king gave his commissions to persons unqualified by law and then expected the parliament should sanctify all; which did not prove accordingly, as was showed before. This was looked upon as a forerunner of the setting aside the test and penal laws. And his lordship was not so short-sighted but foresaw not only that this current, though beginning afar off (for military commissions do not pass the great seal), yet, in the end, would overflow him, but also that upon the main it would bring a confusion fatal to our happy constitution in church and state, and for certain destroy the king. This was a subject melancholy enough for him and void of all hopes or consolation. For he knew the king's humour, and that nothing that he could say to him, would take place, or sink with him. So strong were his prejudices and so feeble his genius, that he took none to have any right understanding that were not in his measures, and that the counsel given him to the contrary was for policy of party more than for friendship to him. But for all that, his lordship in this difficult case was resolved, once for all, to be plain and explicit with him and so (at least) satisfy his own conscience. And once, getting an audience, he took occasion to declare to him all his prognostics depending upon his majesty's declining the test and penal laws, and that with no less zeal, sincerity, and tenderness, than if he had been a parent. "He minded him of the uncontrollable influence of an universal discontent; that no branch of his affairs, especially those of his colligible revenues, would move with any content to him. People would go on continually exaggerating each other's discontents, and mutual encouragements would take place therein, and among persons that should appear fair to him, and neither he, nor any of his ministers, would discover any such their secret practices and engagements; and if there happened any advantage to cover attempts all would break out in a flame as if a mine fired under him. And although the Duke of Monmouth was gone, yet there was a P. of O. on the other side of the water. And as to his army, his lordship said that upon an universal discontent

he would find it a broken reed, that the people would grow upon it or wear it out by their intermixed conversation. Men naturally fall in with parties and their interests among whom they live, and they will not bear the reproaches of their women and pot-companions without falling into harmony with them. That it was utterly impossible to bring the people to a reconciliation with his persuasion; and that the more they were urged, or even showed it, the worse they would be. And that the secretaries were false and treacherous and would infallibly, at a pinch, whatever countenances they showed him to the contrary, not only desert his party but turn against him; for they never were, nor would be friends really to the royal family, and their peculiar way and means of working was by fraud." I can with great assurance affirm the substance of this free discourse to the king to have been really so made as I have represented: for his lordship hath often said to me, that, whatever happened, he would do it and would have it in his power to say to himself at the hour of his death, that he had done his duty to the king and his country. And after he returned from court he told me he had done accordingly; although, as well before as since, he thought it signified nothing. And he seemed very much at ease within himself; having thus declared his thoughts at large and freely to the king; and, at times, he mentioned to me the several matters he had spoke of to him. And, according to his custom of noting things, he set them down upon papers from whence I have taken them and have inserted them elsewhere. There is an obscure cast upon them there; for his lordship had always that caution in his writing, to secure that to whose hands soever his papers came there could be no public nor private offence taken, but a little attentiveness to the manner of these notes will discover what they are.

392. Perhaps some of these prophetic hints given by way of advice to the king by his lordship, being now penned by me so long after, may look a little like poor Robin's method of taking time to foretel things until after the event is past. So conformable may they seem with what happened. And, to say truth, I almost distrust my own pen, lest my unhappiness of having known the events

should infect my expression with a cleverness derived there-upon. And, if allowances must be made me on that account, which I profess not to crave, I hope they will not be thought very large by reason of what I shall say for myself. Barring the unavoidable defects of memory, which will let go the niceties of words and terms and so oblige us to take up with things as in effect they remain in mind, I must here protest an untainted integrity and that what I have related is true. But I am not in a state to rely altogether upon observations; for divers of his intimate friends (I do not name any because I suspect most of them are dead) were so far intrusted in discourse, as to be made acquainted with his lordship's submissive but dutiful counsel to the king, not to break the laws for the sake of any innovation; and, particularly that item of prodigious import, viz. that "although Monmouth was suppressed there was a P. of O. abroad."

393. But to drop these apologetics and conclude, I shall freely subjoin my sentiments of the very root of his lordship's distemper and the cause that rendered it inapt to be cured, and therefore mortal. And that was, in a word, his laying things to heart. The business of his office was too great for one who thought he was bound to do it all well. As to the part of his justice in the court of Chancery, I have said enough. That load, though heavy, was not insupportable. It afflicted his spirits but did not crush them. If the business of the court by reason of necessary attendances in other places ran in arrear, he might hope for more enlargement of his time to recover it. But considering what was added from the ill state of the public, for which he thought himself in great measure obliged to answer or to feel the ill consequences, he saw plainly that he must either disgrace himself by quitting, the very thoughts of which flew in his face as a desertion of his royal master and benefactor in distress; and what, at court, would be expressed in the terms of flying in his majesty's face: for when a minister in so great credit quits, it amounts to a public accusation and declares he could serve honestly no longer; or else he must stay until he should be pressed, as he continually expected, to pass some of the illegal commissions which he was determined

not to do, and, upon that, be removed, with the foul language of the then court, for sauce to it. He had been happy if he could have got clearly off without any of these trials: and it was not a little uneasy to him that, in the interim of these expectations, the courtiers conspired, by ridiculous slights, affronts, base experiments and buffooneries, to grieve and torment him, with design either to bring him into their guilty measures or else to make him withdraw himself out of their way; which, without better reason than to gratify them, he had no mind to do. And he so far restrained himself and his resentments from the public, which seldom or never takes such matters by the right handles, that whatever machinations or inventions were set on foot purposely to diminish him, though he knew out of what shop they came, yet he never maintained any open feud or party on his own account, or either expostulated abroad or troubled the king in private. All which ill usage lay burning in his most sensible breast. And adding thereunto that he saw no dawning of any good to his master, the nation, or himself, he lived in a state of judicious despair; and then no wonder that a distemper, otherwise of an ordinary crisis, got the better of him, or, more directly, that his heart was broke.

394. I have elsewhere noted that his lordship should say that he had not enjoyed one moment of comfort in his life, from the first commitment of that pestilent seal to him. If there was no ease under it at first it must needs be Hell at last. He wanted a good general apathy: and that one may break into two qualifications necessary to an overcharged minister of state. 1. As to himself, equanimity. 2. As to all others, indifference. 1. The former sounds a little philosophic and means a carelessness of events, and the being no more concerned at what may happen to him than at the weather, or any thing else that is out of his power. 2. As to others, the case is not very commendable; for it supposeth one to be wholly unconcerned in the questions of right and wrong, not caring who is injured or suffers, or who gets or loses, how, when, or why; and in office to be without compassion, as a butcher that kills and slays habitually without remorse; nor to let any pleasure or advantage be frustrate, or sleep broke for what

men call duty, and making no account of good or evil but what self-enjoyment, or interest, shall denominate. These qualifications, supposing them to be so necessary as in some times they are, show how little qualified an honest wise man and a good Christian, is for this great employment in ill-natured and perverse times.

395. His lordship had been sensible that he was obnoxious to danger of his person and family, between two great parties, papist and fanatic: neither of whom he had complied with, but resisted in all their projects calculated for making alterations in church and state: and if an unlucky turn should give the public a toss into the hands of either of them, what then must become of him? He looked upon the papist interest in England (at the beginning at least) to be less inhuman and barbarous than the republicans and sectaries; yet he would not be exposed to them, although he had not officiously hurt any of them. But from the others he expected no moderation, who had exercised him with loud threatenings for several years and would have been glad to be as good as their words. And he did not rely upon retirement to render him secure from the malice of those men; and his interest lay chiefly in that they called the church of England party, who might have enough to do to defend themselves; and considering their easiness and aptitude to be imposed on, and that they either hide (as I may term it) or flow along with the current, no dependence in bad times was to be expected upon them. Therefore his lordship resolved to get into the peerage as soon as he could, and enjoy the ordinary privileges and protection of that order. And that he did it not for vanity or puff, appears by his unaffectedness in the preamble of his patent. The common custom about preambles to patents of honour, (which patents are prepared by Mr. Attorney-General in all points except the preamble, which is left to the order of the person to be prepared) is to employ some chaplain or rhetorical scholar, who is set on work to pump hard for eulogiums and, by dint of eloquence, to varnish out his majesty's gracious act. But his lordship, nauseating all such fulsome self-flatteries which like commendatory epitaphs are accounted no better than solemn lying, would have none but a common preamble, as

that monarchs use to reward persons who had served faithfully and well, with marks of honour or the like; which service his lordship might modestly own. His chief doubt was how he might decently apply to the king; and that ended in a resolution to beg it as a boon of the Duke of York to recommend him. This some thought improper, with respect to his not complying with the Papists. But his lordship believed that the duke thought him an honest man and was really his friend: and so it proved; for the duke took kindly his lordship's request and, without hesitation or delay moved the king, and it was as soon granted. Another doubt that he had was about the title; for he would not fix it upon any of his possessions, because it looked as a vanity; nor upon any place which was in the style of any other honour, nor on any new one which had not been in some past time used as a title. At last he settled it upon Guilford, which had belonged to his friend the Duke of Lauderdale, and was by his death extinct. The duchess was then living and he had her approval of it; and many fancied he courted her in the way of marriage and that this was one of his compliments.¹ He was aware of such rumours; but valued them as little as he intended thereby any such courtship. And although (if he had asked) it might have been an earldom, he made a barony his choice, since he did not seek the honour for vanity but for a real protection. And he was infinitely satisfied that he had made no other means but by the duke; which if he had not done, but gone by himself or any other way, it had proved a real offence and had been aggravated as a slight put upon his royal highness.

396. I shall not take upon me to give a summary character of this great man, till I have wiped off some calumnies that have been cast upon him and shown some particular instances of his excellent qualifications in the several parts of life, which I could not conveniently insert in the

¹ John, Duke of Lauderdale, married as his second wife Elizabeth, Countess of Dysart, and widow of Sir Lionel Tollemache. (See § 261.) Lauderdale had been created Duke, in the peerage of *Scotland*, a few months previously. He was not made Earl of Guilford in the peerage of *England* till June, 1674. The Duke died in 1682; the Lord Keeper had been left a widower in November, 1678.

body of this work, in order to demonstrate him to have been a wise and just man, and a good Christian. Slander is like the fish called the remora, which sticking to the helms of great ships disorders the steerage. Ordinary persons are obnoxious to slander; but for the most part it is frivolous, slightly regarded and turns to merriment. But, when applied to great men and ministers of state, it disturbs the course of affairs and the whole government feels it. When he was young, and passed his time in study and the early practice of the law, he fell under no person's evil tongue (except some of his nearest relations, as has been touched already¹) and no fraud, misdemeanour or vice, could be laid to his charge; but he was esteemed a person of the greatest hopes of any of his profession. And as to his general character, then and afterwards some fancied he was inclined to avarice; but they knew not his circumstances nor his humour. At first he lived in a course of shifting with a little, as I may style it, when he was to buy the way into a settlement fit for the business he aimed at. And one that hath neither fund nor friend whereby debts, if any were contracted, might be paid, as many of his rank have, hath reason to be careful. But it often happens that extravagant rakish people, if one upon a level with them doth not spend his money in their wild way, think him covetous. His lordship kept always a reasonable and select company, and never was what they call a company keeper. But with his friends was liberal and free and, in paying reckonings and other seasonable bounties, none more free than he was. Of which instances will be produced hereafter. After he came to make a figure, there are witnesses enough of his generous way of living. So that whoever hath imputed avarice to him, hath been altogether out of the way of right judgment. The faction never applied heartily to calumniate his lordship until he was touched in parliament. And from that time forwards all the party artillery of foul mouths were pointed at him; and the Earl of Sunderland marched at the head of them, who commonly gave out the signal. His lordship's virtuous course of life was a vile obstacle; and

¹ See § 30.

slanders on that head would not stick. But I shall show some snares laid to catch him. In the mean time vilifications plenty. Those were at their tongue's end. He was neither courtier nor lawyer; which his lordship hearing, he smiled, saying, "That they might well make him a whoremaster, when they had dislawyered him." And to show their intent of fixing some scandal and contempt upon him, I shall allege a ridiculous instance or two. His lordship's brother-in-law, more than once named in these papers,¹ came to him seriously with advice; which was that he should keep a whore, and that, if he did not, he would lose all his interest at court; for he understood from very great men (the Earl of Sunderland and his gamesters I suppose) that he was ill looked upon for want of doing so, because he seemed continually to reprehend them for practising the like as almost every one did; and if his lordship pleased, he would help him to one. His lordship was in his mind full of scorn at this proffer, which the messenger did not penetrate; and it was enough to decline the counsel and not accept of his assistance. And with his nearest friends he made wonderful merry with this state policy, especially the procuring part; and said, "That if he were to entertain a madam, it should be one of his own choosing and not one of their stale trumpery." But his lordship had deeper reflections, that, besides the sullying his character if he had such a snake in his bed, they would find a way to come, by her, into his most retired intentions. For the courtiers knew the use that, in politics, might be made of the fair ladies whom they could charm better than his lordship; and no spy like a female.

397. When these pointed darts would not lay hold they were contented to throw dirt; as appears from what they inserted in a newspaper of his lordship's behaviour in the Western circuit; a full account of which may be found in the *Examen*.² And whoever looks into that time, will find a strange tendency to split the laws against those who do not go to church, that is to say Recusants. And some votes of the House of Commons looked that way; as if it

¹ William Soame. See § 257, n.

² *Examen*, p. 364.

were a grievance that those laws were made to extend to sectaries, who are softly styled Protestant Dissenters; such as Presbyterians, Quakers, Anabaptists, &c. But the judges, as his lordship in particular and Justice Jones (who, though absent at Taunton, desired to be comprised in the advertisement) had not such a notion of law as for any body's humour, to treat plain words and expressions as a nose of wax to bend one way or other to gratify parties. But the charge given by the earl as secretary to the judges to that effect, was an *ignis fatuus* or will in the wisp of the faction, concerted to mislead, at least with showing a feint of indemnity to seduce them.

398. I have elsewhere noted that, during the reign of King Charles II. calumny against his lordship at court was kept under; for he would not suffer his mimics to fool with the persons of his ministers that he had a value for. But, in the next reign, when the Roman Catholic designs began to work and his lordship was found utterly unfit for their purposes, and the court instruments of which the Earl of Sunderland was the chief were employed to shake him off that the Lord Jeffries might come on, then the reins were let loose to calumny; and when no misdemeanour could be found to harp upon, they fell, like foolish clowns, to call names as they say; and no scruple was made to vilify him as the unfittest man that ever sat in his place: partial, passionâte, unreasonable, impotent, corrupt, arbitrary, popish, and ignorant. Any thing to make him avoid the room. But his lordship cared not to humour these barkers or to quit his place till he might do it with salvo to his dignity.

399. To show that his lordship's court enemies, the Earl of Sunderland in particular, were hard put to it to find or invent something to report, tending to the diminution of his character, I shall give an account of the most impudent buffoon lie raised upon him and, with brazen affirmations of truth to it, dispersed from the court one morning, that ever came into fools' heads; and Satan himself would not have owned it for his legitimate issue. It fell out thus: a merchant, of Sir Dudley North's acquaintance, had brought over an enormous rhinoceros to be sold

to show-men for profit.¹ It is a noble beast, wonderfully armed by nature for offence; but more for defence, being covered with impenetrable shields which no weapon would make any impression upon; and a rarity so great that few men in our country have, in their whole lives, opportunity to see so singular an animal. This merchant told Sir Dudley North, that if he, with a friend or two, had a mind to see it they might take the opportunity at his house, before it was sold. Hereupon Sir Dudley North proposed to his brother, the lord keeper, to go with him upon this expedition; which he did, and came away exceedingly satisfied with the curiosity he had seen. But whether he was dogged, to find out where he and his brother housed in the city, or flying fame carried an account of the voyage to court, I know not; but it is certain that the very next morning, a bruit went from thence all over the town and (as factious reports use to run) in a very short time, viz. that his lordship rode upon the rhinoceros; than which a more infantine exploit could not have been fastened upon him. And most people were struck with amazement at it; and divers ran here and there to find out whether it was true or no. And soon after dinner some lords and others came to his lordship to know the truth from himself; for the setters of the lie affirmed it positively as of their own knowledge. That did not give his lordship much disturbance; for he expected no better from his adversaries. But that his friends, intelligent persons who must know him to be far from guilty of any childish levity, should believe it, was what roiled him extremely; and much more, when they had the face to come to him to know if it were true. I never saw him in such a rage, and to lay about him with affronts (which he keenly bestowed upon the minor courtiers that came on that errand) as then; for he sent them away with fleas in their ear. And he was seriously angry with his own brother Sir Dudley North because he did not contradict the lie in sudden and direct terms, but laughed, as taking the question put to him for a banter, till, by iterations, he was brought to it.

¹ This was the first rhinoceros ever brought into England, and was sold for an enormous sum of money—Evelyn tells us upwards of £2,000. (*Memoirs*, vol. i. p. 539.)

For some lords came, and because they seemed to attribute somewhat to the avowed positiveness of the reporters, he rather chose to send for his brother to attest, than to impose his bare denial. And so it passed; and the noble earl, with Jeffries and others of that crew, made merry and never blushed at the lie of their own making; but valued themselves upon it as a very good jest.

400. I know not any thing, that came out in public, of calumny against his lordship in his life-time, worth taking notice of more than hath been hinted. His justice was so exact and course of life so unexceptionable, that the libellers had no subject to make any work with. The vilest of them, in all three entitled, "The no Protestant Plots," published to waylay the course of justice against traitors and cunningly contrived for that purpose, if any thing had been known to discredit his lordship's character, had there displayed it. But the worst that the author could contrive was to call him Slyboots; and a younger brother, that usually went about with him, young North. There's all while living; but, since his death the press hath been more free.

401. And, since that time some particular matters were muttered about, without as well as within St. Stephen's walls; as if he had not therein done his duty as lord keeper of the great seal; which, though it never rose to any accusation or public censure, I think may be aptly taken in here. One was, that his lordship refused to put the seal to a mandatory writ directed to the Lord Chief Justice Saunders, to sign a bill of exceptions tendered to him at the trial of the rioters in London. The information was for the riotous fact of the old sheriffs holding a common hall and pretending to elect new sheriffs, after the assembly was dissolved by the lord mayor. At the trial the defendants urged, as hath been related in the Examen, that the lord mayor had no power to dissolve the common-hall; which point the Lord Chief Justice Saunders overruled, as a vain and empty pretence, and utterly against law. Upon that, the bill of exceptions to the opinion of the judges was tendered, which he refused to sign. After the trial was over, they came to his lordship for a petition for a writ and suggested a form of it express in the register.

Upon examination, his lordship found that that precedent was of a writ to the sheriff who is, in some cases, a judge; but is also a ministerial officer to whom mandatory writs may fitly be directed. But it follows not from thence that they may be directed to the judges of the courts in Westminster-hall. And what process can be upon it? There is no form of any attachments nor precedent of any like process to follow. And the penalty in the form, is only—"on pain that shall fall thereon:" which shows it to be a mere writ of favour where it might be granted. But there never was any such, to the knowledge of any man living, sent out; and thereupon in this case it was denied. These matters were thus pressed, not because there was any right or sense in them, but by way of coals to be blown up for exasperating the fire when time should serve. It may not pass that the Chief Justice Saunders was in the wrong in refusing the signing; but the chicane upon that point of law which was most clearly with him, is too tedious to be inserted here.

402. Of a like nature with this, was another application to the great seal for a fiat that a writ of error might issue to reverse an outlawry against Sir Thomas Armstrong. The law is, that if a man outlawed for high treason renders himself within a year, he may have the benefit of a writ of error to reverse the outlawry and so take his trial; otherwise not: and an outlawry in such case while it stands, is a complete attainder, as if tried and attaint by verdict and judgment.¹ Armstrong fled into Holland and was outlawed for the Rye plot treason. Afterwards, within the year, he was taken up in Holland and brought into England and, being opposed as to what he had to say for himself why execution should not be awarded, he insisted that, being present here within his year, he ought to have a writ of error and be admitted to plead. But the judges were of opinion that being brought in by force, against his will, was not a rendering himself within the statute; and thereupon

¹ For an account of the proceedings against Sir T. Armstrong in the King's Bench, see *Howell's State Trials*, vol. x. p. 106. "When Armstrong insisted that he asked nothing but the law, Jeffries, in his brutal way, said, 'he should have it to the full;' and so ordered his execution within six days." (*Burnet*, p. 997.)

he was executed. Pending the question, application was made to his lordship for a writ of error; and, examining into the matter, his lordship found that writs of error to reverse outlawries in treason, had never been made out without a warrant from the attorney-general; for it is not a writ of right but of favour: and it could not be demanded at the great seal otherwise; nor had the seal a warrant without a fiat from the attorney-general. But besides, the matter of right depended before the justices of oyer and terminer; and the writ would follow or not upon their determination: for which reason, it was impertinent to come to the great seal about it. But then and afterwards a clamour was raised and ventilated abroad, as if the man had been hanged for want of a piece of common justice at the great seal; and, after the revolution, divers warm members began to open about it. For which reason a paper was framed and put into the hands of some members, wherein it was thought fit to represent farther, that,

1. It is the office of the cursitor to make out writs of error in criminal cases when the usual and proper warrants are brought to them. And the lord keeper's fiat never was and, in that case, would not have been a warrant to the cursitor for such writ. Wherefore the refusal of it lay not upon the lord keeper.
2. The application to the great seal for special writs must be either by motion in open court or by petition; which being granted, a fiat is wrote and signed upon it; and that remains in the offices and is the warrant for farther proceeding: else it is delivered out unanswered; which is the refusal to grant what is desired in the petition. And no such application was ever made in that case.
3. An oral application in private is not to be regarded, because there is no certainty of what is either asked or denied. Business of that kind is not trusted to memory; but must be in writing, because the lord keeper is not to solicit any man's suit at his instance. He may direct if he thinks fit but is not bound. Suitors must follow in the proper offices; and it was never heard that such suit was made to the lord keeper, but from the person whose case it is. There was reason to endeavour a right understanding at that time when committees, of both houses apart, were appointed to inquire into the foregoing proceedings. That

of the House of Lords was called "The Committee of Murder." But, after all methods of inquiry that could be taken upon oath or otherwise, no blame was found in any judge or minister in the time of King Charles II. Which as has been touched already, is a vindication that few ages put to such a trial, could hope for.

403. One thing more is to be remembered which was talked in coffee-houses concerning his lordship; but by those only who were the culpables. The six clerks have great dependence on the course of the court of Chancery for their profits; and are always disposed to keep the judge in good humour and prevent alterations to their prejudice. And the judges of all the courts make no scruple to accept of presents of value from the officers by way of new-year's gift, or otherwise; which is a practice not very commendable, because, with some, it may have bad effects.¹ Accordingly these six clerks clubbed, and made a present to his lordship of £1,000 which he took as an instance of their respect, without regard to or knowledge of any other design or intention of theirs. But soon after this, they began to fall out with the sixty under-clerks, and pretended to remove them at pleasure, being their substitutes for whom they were to answer, as masters turn servants away whom they can trust no longer. The sixty, on the other side, stood upon it that they bought and paid for their seats and were sworn into their places; and however they were subject and accountable to the six, they were not at their mercy, to be removed without the authority of the court. The six thought fit to put in practice their own authority, and began with one Sewel a clerk, one of the sixty, and ordered him out of his seat, and (as I remember) gave it to another. This produced a petition of this Sewel to his lordship, praying to be restored and the rest of the sixty confirmed in their places; of which decree the justice is unexceptionable. It is no wonder that the six were infinitely disgusted; for, if they had any bad design, as it seems plain they had, viz. of adding sixty to their six, they had their reward. I am

¹ This practice was abolished by Lord Cowper on his being made Chancellor. The gifts had grown so considerable as to amount to £1,500 per annum. (*Burnet's Own Time*, vol. v. p. 872.)

firmly persuaded that his lordship knew nothing of it till the cause upon the petition came before him ; and if he had known of it before, he had not accepted their kindness, and that afterwards he repented him of it. And of all the actions of his life, this came nearest to a colourable mis-construction. Nay, there is no other capable of any. And I guess that, although I have here related it undisguised and out of my personal knowledge, many will incline to take it in the worse sense and as being a plain bribe, though the consequence flies in the face of it: and, for that reason, many would have left out this whole passage so singular as it is ; but professing, as I do, to render every action of his lordship conspicuous, I could not acquit myself to deal so with this which would have manifestly tainted all I have showed for his lordship's advantage.

404. I have now done with all that appeared, or could appear, of diminution to the reputation, true or false, which his lordship, by his steady course of life, before his parting with the world, had acquired. I shall now, pursuant to my design, show by many particular instances, how much he shined in every part of life. I have already hinted that his profession of the law did not prevent his entering into other kinds of learning, and particularly natural knowledge. His lordship was an early virtuoso ; for after his first loose from the university, where the new philosophy was then but just entering, by his perpetual inquisitiveness and such books as he could procure, he became no ordinary connoisseur in the sciences, so far as the invention and industry of the then latter critics had advanced them. And the same course he pursued, more or less, all the rest of his life ; whereby all discoveries at home and from abroad, came to his notice, and he would have been loth to have let any escape him.

405. His lordship had great pleasure in the society of that very good master in chancery, Sir John Hoskins,¹ who was a proof experimental that that office might be executed with integrity. Their chief enjoyment of each other

¹ "A most learned virtuoso, as well as lawyer." (*Evelyn's Memoirs*, vol. i. p. 513.) "He was," says Granger, "a man of irreproachable character: more inclined to the study of the new philosophy than to follow the law." (vol. iii. p. 371.)

was early, when his lordship began to be eminent in practice and the other had some aspect towards the law. But his chief, or rather entire, application was to philosophy and experiments. And therein he became so far an adept, that, being one of the Royal Society, he was at last advanced to be their president. This resignation to philosophic studies spoiled the lawyer; but made an accomplished good companion, especially to one who delighted in those matters as much as himself. After a long day's work, if his lordship could get Sir John Hoskins to a French house, for a petit supper but ample feast of discourse, he was happy; which I can the better testify, having often been one of the company. There was no corner of the universe that imagination could make accessible, but they searched it to the quick; and nothing new sprang abroad or at home, but one or other of them, early or late, brought it under examination. The good knight made use of his profession so far as to make an accomplished master in chancery; in which post he had all just encouragement from his lordship when he had the great seal. And accordingly his lordship was always pleased when he sent references to him, because he knew his integrity and that, in his office, the suitors were well used and no ravenous practices took place: which, as to himself, was egregiously so; but masters in chancery, by their clerks, as well as justices of the peace by theirs, are but too much imposed upon. One rule was verified in him, viz. "That no credit is to be given to the outside;" for he was certainly one of the most hard-favoured men of his time, and his visage was not more awkward than his dress. So that going, as his use was, on foot, with his staff, and an old hat drawn over his eyes, he might be taken rather for a sorry quack than, as he was, a bright virtuoso. So men discover what they value themselves for; and, on the other side, the same is to be said of them that cultivate dressing; whereof the solicitude or neglect, however proper it may be, will show itself by some kind of affectation.

406. His lordship was no concealed virtuoso; for his diffused acquaintance and manner of conversation made him known and esteemed, as a professor of most polite arts, and given to scientific inquiries. This brought upon him

an importunity to be admitted a member of the Royal Society; and one Sir Theodore de Veaux was employed to press him upon it. But his lordship never countenanced the proposal; and at length gave his positive denial. He esteemed it a species of vanity for one, as he was, of a grave profession, to list himself of a society which at that time was made very free with by the ridiculers of the town: and he could not discover what advantage of knowledge could come to him that way which he could not arrive at otherwise. His lordship had another acquaintance who resided in the Temple, and, being of a retired disposition, was very far gone in the mystery of algebra and mathematics. This was Mr. John Werden, afterwards Sir John, and many years a commissioner of the customs. He was the only son of an incomparable courtier, cavalier, and a most faithful servant in the royal family, Colonel Werden.¹ This Sir John inspired his lordship with a sort of fury in pursuit of the art of perspective. He showed him the picture of a tree upon the boughs of which hung the letters of his name cut solid, and placed as it were contingently, but expressed in true perspective. There was one Mr. Aubrey of Surrey,² a professed virtuoso, and always replete with new discoveries. He often visited his lordship, who encouraged him by his attention and asking many questions: and his answers served well enough in order to a farther inquiry. One Mr. Weld, a rich philosopher, lived in Bloomsbury. He was single, and his house a sort of knick-knack-atory. Most of the ingenious persons about town sometimes visited him; and, among the rest, his lordship did suit and service there. This gentleman was of a superior order, and valued himself upon new inventions of his own. He sowed salads in the morning to be cut for dinner, and claimed the invention of painted curtains in varnish upon silk which would bend and not crack; and his house was furnished with them: and he delighted in nothing more than in showing his multifarious contrivances. His lordship was once invited to a philosophical

¹ Some farther account of this gentleman may be found in the Life of Sir Dudley North.

² John Aubrey, the antiquary.

meal at the house of Mr. Evelyn at Deptford.¹ The house was low, but elegantly set off with ornaments and quaint mottoes at most turns; but above all his garden was exquisite, being most boscaresque and, as it were, an exemplar of his book of Forest Trees. They appeared all so thriving and clean that in so much variety, no one could be satiated in viewing. And to these were added plenty of ingenious discourses which made the time short.

407. His lordship had a great value for Sir Jonas Moor, a capital mathematician, knowing well his worth and honesty by means of his employment under the commissioners for dividing the fens; at which his lordship had presided. That good man had taken Mr. Flamstead,² the noted astronomer, into his protection and, when he was scarce able to subsist in his college at Cambridge, planted him in the Tower with accommodation in the buildings of the ordnance, of which Sir Jonas was an officer;³ procured him instruments and, at last, settled him in the new-built observatory at Greenwich. Sir Jonas once invited his lordship to dine with him at the Tower and, after dinner, presented Mr. Flamstead. His lordship received him with much familiarity and encouraged him to come and see him often, that he might have the pleasure of his conversation. The star-gazer was not wanting to himself in that; and his lordship was extremely delighted with his accounts and observations about the planets, especially those attendant on Jupiter; showing how the eclipses of them, being regular and calculable, might rectify the longitude of places upon the globe, and demonstrating that light did not pass instantaneously but in time; with other remarkables in the heavens. These discourses always regaled his lord-

¹ Evelyn and the lord keeper appear to have lived upon very friendly terms. "I dined with my lord keeper, and walking alone with him some time in his gallery, we had discourse of music. He told me he had been brought up to it from a child, so as to sing his part at first sight. Then speaking of painting, of which he was also a great lover, and other ingenious matters, he desired me to come oftener to him." (*Memoirs*, vol. i. p. 534.)

² "The learned astrologer and mathematician, whom his majesty had established in the new observatory in Greenwich Park, furnished with the choicest instruments." (*Evelyn's Memoirs*, vol. i. p. 458.)

³ Sir Jonas Moor was surveyor-general of the Ordnance.

ship; and a good benefice¹ falling void, not far from the observatory, in the gift of the great seal, his lordship gave it to Mr. Flamstead, which set him at ease in his fortunes and encouraged his future labours from which great things were expected; as applying the Jovial observations to marine uses for finding longitudes at sea, and to correct the globes celestial and terrestrial which were very faulty. And in order to the first, he had composed tables of the eclipses of the satellites, which showed when they were to happen one after another; and of these, finely painted upon neat board, he made a present to his lordship. And he had advanced his other design of rectifying maps, by having provided large blank globes on which he might inscribe his places corrected. But plenty and pains seldom dwell together; for as one enters the other gives way: and in this instance, a good living, pensions, &c., spoiled a good cosmographer and astronomer; for very little is left of Mr. Flamstead's sedulous and judicious applications that way. His lordship had another virtuoso acquaintance in the Temple, one Mr. Ball, son of Sir Peter Ball, that, from his first society of that kind kept him company. But family misfortunes overtaking him, his activity and inclinations deadened or rather degenerated into domestic cares; so that I think it enough to have named him as one in the list of his lordship's ingenious acquaintance.

408. There were two or three more persons very eminent in their way, and also particularly acquainted with his lordship. I shall therefore take this opportunity to remember something of them. And first, of Sir Robert Sawyer, who rose no higher than attorney-general; for, at the Revolution, for reasons I shall give, he was dropped.² He was a proper, comely gentleman, inclining to the red; a good general scholar and perhaps too much of that, in show at least; which made some account him inclined to the pedantic. He was of the family of Sir Edmund Sawyer and so related to his lordship. He was continued at the

¹ Burstow in Surrey, the only preferment which Flamstead ever obtained.

² He became Attorney-General 21st February, 1681. His only daughter, Margaret, married Thomas, eighth Earl Pembroke, to whom he left his estates. He died 28th July, 1692.

university till he had taken the degree of master of arts. And being designed for the gown, he had his logic and arts and, by performing the academic exercises, he had acquired an assurance and formality of speaking in public; which is always profitable to a professor in Westminster-hall. It was his good fortune to divert to the law; and his first practice was at the Exchequer court; and there he pitched his camp and arrived at top practice. It was also his advantage to come up under the Lord Chief Baron Hales, whose learning in the law and records and most pertinent application of it were admirable; and students in the law or practisers under him, profited more than by any study. And no business in the law is so instructive in order to serve the crown as that of the Exchequer; which, by proper institution, is the court of the king's revenue; and the royal prerogative is at home there. It is no wonder therefore that Sir Robert Sawyer, being taken into the attorney-general's place at a time when the crown was very much embarrassed at law, as about the time of the Rye plot, conducted those great affairs so steadily and well as he did. But we must charge to account, among his very great advantages, his relation to his lordship which created a friendship and a familiarity betwixt them; and thereby he had the most cordial assistance that his lordship could, on all occasions, give him. And this alliance was the firmer because Sawyer's bias was to loyalty which had been the character of his family.

409. I need not recapitulate the great dependences of law that succeeded well under his conduct; for all notes of the latter end of the reign of King Charles II. are full of them. He was continued in his office by King James II. but then he was soon off the hooks: for soon after the Lord Keeper North died, a deluge of irregular dispensations and *non obstante's* were coming towards him; and he was so just a man in his nature that he was resolved, whatever became of him, he would not pass any such. So there was like to be a stop at him. He was always very careful of his office and, when he did not fear any impositions but was free to use his judgment as other attorneys-general did, yet when matters of life and death were depending he used to summon the king's counsel to attend

him at his chamber, where it was freely consulted if there were a fitting evidence to proceed upon, or not; and if the general opinion was that the evidence did not come up, he never pushed any trial against any man. Now in this time of peril he was so kind to his friends, the king's counsel, as to give them warning to study the points; for they would be asked whether the king might not, by his royal grant, appoint officers unqualified with *non obstante's* to the test laws; and that the first case would be concerning the soldiery. And I believe the whole nation of the law were at that time apprised of all the arguments *pro* and *con*; so none could be taken napping. The first person that was tested was Mr. Solicitor Finch, a younger son of the Lord Nottingham; and he refused plumb. Upon one Saturday, in the afternoon, I was cited to the lord chancellor and told I must give him an answer in writing forthwith. I answered, "that so nice a point ought to be well considered." He replied, "there was no need of that;" and cited some books. I told him I had seen those books, and would send him an answer the next day, which was a refusal. On Sunday after, Mr. Solicitor Finch was discharged and one Powis made solicitor in his room. Mr. Attorney did not stay long, but was displaced to make room for Powis to be attorney. And there ended Sir Robert Sawyer's preferment.¹ He ended his days honourably and in peace; and his acquisitions remain in a noble family by a match with his only daughter. And nothing ever im-

¹ The following is the account given by Sir John Reresby of the transaction mentioned in the text:—"He," (Mr. Jones, the son of the Chief Justice) "told me further, that Sir Robert Sawyer, the attorney-general, had been directed by the King to draw up a warrant, by virtue of his prerogative, to invest a priest of the Church of Rome with a benefice; and to confirm one Walker, the head of a house in Oxford, and some fellows of the same who had erred over to the papal communion, by a *non obstante*; that the attorney said, this would not be against one statute only but against all the laws since the days of Elizabeth; that he therefore durst not do it, and desired the King, therefore, to weigh the matter a little with himself, for that it struck at the very root of the Protestant church, quite contrary to his majesty's late gracious promises. In short, that the attorney further said, he doubted not but as soon as another could be found to do the work, he should lose his place; such a slave was the King to the priesthood of Rome." (*Reresby's Memoirs*. p. 233.)

peached him or his actions, in public. And that is a fair conclusion of a man's life; although we might see that, without such a noble support, he might have been calumniated for what was done in his time, as well as some of his contemporaries.

410. Another of his lordship's acquaintance was one Mr. William Longueville, sometime a bencher of the Inner Temple, who was one of his lordship's much esteemed friends and companions. His discourse was fluent, witty, literate, copious and instructive; and those who did not well attend to him or did not understand him thought he talked too much. His excellence of conversation lay in a select society of one or two; but he had too much in him to allow more a due share in the conversation. He was a master of classic wit, and had the best Latin sentences from the orators, historians, and poets, at his tongue's end; and used to apply them significantly and with that judgment as cleared him of pedantry. His method was much after the way of epic compositions, full of digressions and episodes; but neither was the main let fall, nor time lost, upon the by. This *copia* rendered him less fit for bar-practice, where submission and reference doth more in a cause than reasoning, and insinuating more than discoursing. For this reason he diverted to conveyancing; and in that practice rode one of the admirals. His industry was indefatigable and his integrity as the driven snow; and as few blunders (if any) have come from his chamber as from any of his pretensions. His beginning was low, for he was the son of a cavalier father who spent extravagantly what the tyranny of the times had left him, and at last fell to his unprovided son to be maintained, not only in his necessities, but in extravagances. And he with incomparable piety and application was a father to his father. A good-natured six-clerk took a fancy to the young man and gave him credit, by which he crept into that office and at length made it his own; and in fit time he sold it. By which he had a foundation of estate; and what with a match by which he hath posterity, and his practice, he hath re-edified a ruined family. His address and flowing wit recommended him to the knowledge of most eminent persons and he was entirely trusted by divers considerable

families. And he used with his lordship an untainted friendship which he continued after daily familiarity must cease; for he omitted no opportunity of giving his lordship information, admonition, and advice, when he thought he might do him service by such freedoms. All which his lordship accepted with exquisite candour and had a very great value for such a friend as he was; and how many great men reject such and divert to flatterers! Mr. Longueville was the last patron and friend that poor old Butler, the author of *Hudibras* had, and, in his old age, he supported him. Otherwise he might have been literally starved. All that Butler could do to recompense him was to make him his heir, that is give him his remains; but in loose papers and indigested. But Mr. Longueville hath reduced them into method and order; and some of them have been been since printed. It might have been better, perhaps, if they had never seen the light; for, under a variety of surprising wit and lively conceit there is couched but an awkward morality.

411. This Mr. Longueville first introduced to his lordship's acquaintance the most florid and accomplished gentleman of the law as in the course of his practice he appeared to be, Sir John King. His beginning was in general learning, having his face directed towards the church; and so far as polite literature reached he was accomplished, being master of Tully and the Latin oratory. He left the university and applied to the law. His first practice was before the judicatory for the rebuilding of London after the fire. There he made himself known, and as that court consumed its business, he crept into better in Westminster-hall and was soon let into the wheel of preferment; that is by being put into some minor attorneyship, as of the queen or duke, I remember not which: but he became the top practiser in the court of chancery; for he was cut out by nature and formed by education for that business. He had the most of an orator and was withal the most polite and affable gentleman that I ever knew wear a gown. His principal care was to be instructed and then his performance was easy. All his misfortune lay at home, in a perverse consort who always after his day-labour done entertained him with all the chagrin and

peevishness imaginable; so that he went home as to his prison or worse; and when the time came, rather than go home, he chose commonly to get a friend to go and sit in a free chat at the tavern over a single bottle till twelve or one at night, and then to work again at five in the morning. His fatigue in business, which as I said was more than ordinary to him, and his no comfort or rather discomfort at home and taking his refreshment by excising his sleep, soon pulled him down; so that, after a short illness, he died.

412. His lordship had one friend that used to frequent him much and was greatly countenanced by him. It was Mr. Charles Porter, who, in the reign of King William, was made lord chancellor of Ireland, where he died.¹ This person had run a strange course of variety in his life. He was the son of a prebend in Norwich and a 'prentice boy in the city in the rebellious times. When the committee house was blown up, he was one that was very active in that rising, and after the soldiers came and dispersed the rout he, as a rat among joint-stools, shifted to and fro among the shambles and had forty pistols shot at him by the troopers that rode after him to kill him.² In that distress he had the presence of mind to catch up a little child that, during the rout, was frightened and stood crying in the streets and, unobserved by the troopers, ran away with it. The people opened a way for him, saying, "Make room for the poor child." Thus he got off and, while search was made for him in the market-place and thereabouts, got into the Yarmouth ferry and at Yarmouth took ship and went to Holland, there being an opportunity of a ship then going off; and he was scarce out at sea before the pursuit came down after him; so narrowly he escaped hanging at that time. In Holland he trailed a pike and was in several actions as a common soldier. At length he kept a cavalier

¹ He was originally made lord chancellor of Ireland, in the reign of James II., during the vice-royalty of Lord Clarendon. "He was," says Burnet, "a man of ready wit, and being poor, was thought a person fit to be made a tool of. When Clarendon was recalled, Porter was also displaced, and Fitton was made chancellor, a man "who knew no other law but the king's pleasure." (*Own Time*, vol. iii. pp. 1119, 1163.)

² 24th April, 1648. See *Blomefield's History of Norfolk*, vol. iii. p. 395.

eating-house; but, his customers being needy, he soon broke and came for England and being a genteel youth, was taken in among the chancery clerks and got to be under a master, in which employment he laid a foundation for practice in that court beginning with drawing; and afterwards he applied to the bar. His industry was great and he had an acquired dexterity and skill in the forms of the court; and although he was a bon companion and followed much the bottle, yet he made such dispatches as satisfied his clients; especially the clerks who knew where to find him. His person was florid, and speech prompt and articulate. But his vices, in the way of women and the bottle, were so ungoverned as brought him to a morsel; and he did but just hold up his head with all the advantages that fell to his share; which were very great: for when the Lord Keeper North had the seal, who from an early acquaintance had a kindness for him which was well known and also that he was well heard, as they call it, business flowed in to him very fast and yet he could scarce keep himself at liberty to follow his business. The best account of which strange conduct is that he was careless and joined with others in taking up monies; and so carried on a jolly way of living. At the revolution, when his interest fell from and his debts began to fall upon him, he was at his wits' end. And some knowing his case and pitying him (for, at large, he was indeed a very honest fellow) recommended him as a plausible man, fit to be lord chancellor of Ireland; and accordingly he was knighted and sent over. There he lived some years and in that place concluded his days little better than insolvent. It is not to be wondered at that this fair-conditioned gentleman of the Chancery order should be acceptable to his lordship; for, barring his private failings and no less secret debts, his character for fidelity, loyalty, and facetious conversation, was without exception; and his lordship knew little of his secret ways to give him a disgust to his person who also had the good fortune to be loved by every body. I have remembered thus much of a gentleman that underwent all extremity of good and evil fortune; whereof the particulars that are not of my own knowledge I had from his own mouth, in very serious conversation. All which is

worthy to be known; and the rather, because he had that magnanimity and command of himself that no surprise or affliction, by arrests or otherwise, could be discerned either in his countenance or society: which is very exemplary; and in cases of the persecuting kind, as injustices and the malice of powers, heroical in perfection.

413. The Lord Chief Justice Hales, a profound common lawyer and both devotionair and moralist, affected natural philosophy as I have already observed of him.¹ But here I shall take notice only of a book he put out, entitled "Of the Non-gravitation of Fluids." His lordship did not approve of his doctrine but wondered that a man of his great ability in other things should lapse so childishly into error, as in that book he showed himself guilty of. But the perusal of it put him upon a stricter consideration of hydrostatics than he had been used to before. And among the many instances he thought of for illustrating the pressure, or gravitation, of fluids, he fell upon the consideration of the bladders of fishes; what effect they had, and by what means. He concluded that the contracting and dilating of the bladder, whether by a muscular action or the more or less compression of the water and perhaps both, caused the fish to rise or sink, or rest in the water, without any action of the fins. It was alleged against this, that there is no time when the fish doth not make use of her fins; but whoever observes them even in their most quiet state shall discern their fins more or less movent and employed. This may be no labour or pains to the fish as under any constraint, more than it is to us by virtue of our muscles to stand, or sit, upright; but it is an action in a manner involuntary and that attends common life, and neither we nor they perceive it. Thus the matter used to be debated between him and his nearest friends; but he yielded nothing but was continually more satisfied of his own notion. At length it was agreed that each party should draw up their reasons and send them to Mr. Oldenburgh, the publisher of the Philosophical Transactions,² as to a public notice. His lordship's paper is to be found in

¹ *Supra* § 80 *et seq.*

² And secretary to the Royal Society.

Mr. Lowthorp's Abridgment,¹ vol. ii. p. 845, to which I refer the reader.

414. It appears in Mr. Lowthorp's collection that his lordship's hint was laid hold of and approved by the virtuosi of the time; particularly by Mr. Boyle² and Mr. Ray,³ who in papers there entered have pursued thereupon. I have not found that any of them knew who was the author of this paper. His lordship sought no fame nor commendation but information only. Therefore he did not add his name; which he would not have to be tossed whatever became of his notion.

415. About this time the philosophical world was entertained about settling the grand affair of the mercurial barometer, and its indications. Among the rest Sir Samuel Moreland⁴ published a piece, containing a device to prolong the indicatory space from three inches, as in common tubes, to a foot or more as you please; and he defied all the virtuosi to resolve it. This he called a static barometer; for it was contrived by suspending a common tube at one end of a plain balance, and the other arm to be duly counterpoised and drawn to a point directed to play against an arch of about a sextant, divided into three parts; and that was to correspond with the three inches on the plate of an upright tube. The cistern was a cylindrical glass of more than the double diameter of the tube; and in that charged

¹ Of the Philosophical Transactions.

² Robert Boyle, the celebrated philosopher, "a man illustrious by birth, by learning, and by virtue."

³ John Ray, the naturalist. The paper referred to is No. 115, p. 349.

⁴ It is to be regretted that there is no account of this singular man to be found in our biographical collections. During the Protectorate he was employed under Thurloe, Cromwell's secretary, and dedicated to the Protector a "History of the Persecutions in Piedmont." (*Memoirs of T. Hollis*, p. 746.) While thus intrusted with the secrets of the government, he was in the habit of betraying them to Charles II., and on the Restoration was knighted, "as a public testimony that the king had received most considerable services from him for some years past." (*Kenne's Register*, p. 135.) His majesty was also pleased to present him with a medal, on the reverse of which was the following inscription: "IN ADVERSIS SUMMO VITÆ PERICULO PROSPERIS FELICI INGENIO FREQUENS ADUIT;" and at the same time, gave him leave to wear the medal, "as an honourable badge of his signal loyalty," (*Evelyn's Numismata*, p. 141), "or more justly," say the authors of the *Life of Hollis*, "as a badge of baseness, which should render him infamous to all

with mercury, the tube, erected according to art, was immersed; and the moving of the mercury in the tube, higher and lower, was of no regard, but the index only. His lordship wrote a paper in answer to the knight's challenge and considered this experiment according to the laws of hydrostatics, and concluded that the mystery lay in the difference of specific gravity between mercury and glass which may be nearly as one to twenty. The standing of the mercury in the tube is always taken upon the distance of the upper from the lower superficies; and whatever happens, the mercury will find that distance as the pressure of the atmosphere requires. He considered also that the quantity of mercury and the quantity of the glass tube not immersed, taken together, were the sum of the whole weight above the stagnum, supposed to make an equilibrium against the counterpoids. This standing level, and the index pointing (for example) to $29\frac{1}{2}$ inches, if the variation of the pressure comes to require a 30 inch column, then $\frac{1}{2}$ inch mercury in weight is added on that side. This must draw down the tube into the stagnum, till so much of the glass tube is immersed as shall answer that increase of weight; and then the index riseth, because the tube and the mercury tend down into the stagnum. But as the glass goes down the mercury seems to rise in the tube; for the column will always, as I said, answer the pressure whether the tube goes up or down. His lordship considered also that the specific weight of glass is so much less than that of mercury, that the glass tube must lose two or three inches to countervail one half, or perhaps one quarter

posterity." The honours bestowed upon him by the king did not prevent the public, however, from appreciating him as he deserved; and Pepys tells us that "he was looked upon by all men as a knave." (*Diary*, vol. i. p. 44.) In his old age he became entirely blind, and had the misfortune to be entrapped into a marriage with a woman, who was represented to him to be "a very virtuous, pious, and sweet-dispositioned lady, an heiress, who had £500 per annum in land of inheritance, and £4,000 in ready money," &c., but who unfortunately turned out to be "a coachman's daughter, not worth a shilling." (*Pepys's Correspondence*, vol. ii. p. 78.)

Sir S. Moreland has sometimes been supposed to have been the inventor of the steam-engine; but this conjecture is incorrect. (See the subject examined in the *Quarterly Review*, vol. xxxii. p. 406.)

of an inch of mercury, whether sinking into the stagnum or emerging from it, and so in proportion as it shall happen; which makes the opposite arm, with the index, make larger sweeps than the rising and falling in common tubes show. His lordship considered farther that the stagnum not being very wide, as the tube sunk the mercury there rose and swallowed the glass faster than, if wider, it would do; and that it ought to be so adjusted for quantities of mercury and glass, that the arm shall not play much above or below the level, which otherwise would create some impediment if not inequality in the motion; and lastly, that the arch must be graduated mechanically; for the measures must be taken as they happen and will not be adjusted by calculates. It is obvious how, by this means, the beam moves and stands in continual balance and the index shows the barometrical action by the arched and graduated plate with advantage. But in practice, the many frictions, as of the mercury in the tube and of the glass in the stagnum, corrupt the nicety of the instrument (and in time exaggerating) so much, that it is not made use of but for show.

416. When the virtuoso received his lordship's paper, he blustered and threatened a most powerful answer but never was so kind as to send any. On the contrary he took an opportunity to wait on his lordship and they became good philosophical friends and acquaintance; and once, upon an invitation, his lordship dined with Sir Samuel at his house; and though his entertainment was exquisite the greatest pleasure was to observe his devices; for every thing showed art and mechanism. A large fountain played in the room and all the glasses stood under little streams of water. He had a cistern in his garret which supplied water to all parts of his house as he thought fit to contrive it. The water was raised by a common pump (as it seemed to be) in his yard: but, going to lift the sweep, it rose (as it were) of itself; for it was prolonged beyond the tree and there had a counterpoise of lead; which made the sweep move as the beam of a scale: and wherever there was like to be a friction a roulet was placed to receive it. In like manner, windows, doors, hinges, and chimneys spoke the owner to be an artist: and his utensils abroad had the

same taste. His coach was most particular; and he made a portable engine that moved by watchwork, which might be called a kitchen; for it had a fire-place and grate with which he could make a soup, broil costeleets or roast an egg; and for that, his contrivance was by a fork with five tines (as I may call it) which stood upright at a due distance before the firegrate and turned slowly. An egg put into that would roast according to art; and if a piece of meat were stuck upon it, it was dressed by clockwork. He said himself that this machine cost him £30. He took it with him in his own coach, and at inns he was his own cook. But to conclude with a capital invention of his. When he was told that the Lord Keeper North was dead, he asked of what disease? It was answered, of a fever. "It is strange," said he, "that a wise man as he was should die of a fever." "How," said the other, "should a wise man prevent it?" "By doing as I do," said he; "that is to go to bed with a glysterpipe always in my reach; and that is a box to hold the liquor the lid of which is a plug that screws down and evacuates it: and from the box proceeds a flexile pipe with the tool at the end; by which at any time when I find myself not well, I give myself a clyster. Whereas others are forced to send for help; and in that delay a fever lays hold which might have been suppressed at first.

417. His lordship was much affected by the discoveries which fell in the consequences of the Torricellian experiment; whereby a new world of air compressing every thing it touches is revealed. He could not but observe a manifest connexion between the alterations of the mercurial station and the course of the winds and weather; but could not fix in his mind any certain rules of indication but rather the contrary, viz. that events failed as often as corresponded with the ordinary expectation. But yet he would not give it over for desperate, and hoped that a more general observation might generate a better prognostic of the weather from it than was yet known. And that must be expected from a more diffused if not an universal use of it, which could not then be thought of; because the instruments were rare and confined to the cabinets of the virtuosi; and one was not to be had but by means of some of

them. Therefore his lordship thought fit to put some ordinary tradesmen upon making and selling them in their shops; and accordingly he sent for Jones the clock-maker in the Inner-Temple Lane; and, having shown him the fabric and given him proper cautions in the erecting of them, recommended the setting them forth for sale in his shop; and, it being a new thing, he would certainly find customers. He did so and was the first person that exposed the instrument to sale publicly in London. But his lordship, perceiving that his business lay in other operations he was more used to and that he began to slight these, sent for Mr. Winn, a famous instrument-maker over-against his house in Chancery-Lane, and did the like to him who pursued the manufactory to great perfection and his own no small advantage; and then others took it up, and few clock-makers, instrument-makers, cabinet-makers, and divers other trades, were without them always in their shops, ready for sale: and all moving from the first essays, as I related, set on foot by his lordship. He was a true lover of arts; and as well for the encouragement of that Mr. Winn as for his own speculative humour (for he had not time to practise drawing) he caused a case of mathematical instruments to be made by him, which are yet extant, and cost fifty pounds; and nothing of the kind can be made by the hands of men more nice, elegant, and curious than those are.

418. Now, to illustrate his lordship's inclination to ingenious arts and sciences, I have two subjects to enlarge upon. 1. Music. 2. Picture. As for his music I have already mentioned his exquisite hand upon the lyra and bass-viol, and the use he made of it to relieve his solitude in his chamber. He had a desire to use also the theorbo and violin. He scarce attempted the former but supplied the use of it by the touch of his lyra viol upon his knee, and so gained a solitary concert with his voice. He attempted the violin, being ambitious of the prime part in concert, but soon found that he began such a difficult art too late; and his profit also said nay to it for he had not time for that kind of practice. It was great pity he had not naturally a better voice; for he delighted in nothing more than in the exercise of that he had, which had small virtue but in

the tuneableness and skill. He sang any thing at first sight as one that reads in a new book, which many even singing-masters cannot do. He was a great proller [?] of songs, especially duets; for in them his brother could accompany him; and the Italian songs to a thorough bass were choice purchases; and, if he liked them, he commonly wrote them out with his own hand. And I can affirm that he transcribed a book of Italian songs into a volume of the largest quarto, and thicker than a common-prayer book. And this was done about the time he had received the great seal; for if he would discharge his mind of anxieties he often took the book of songs, and wrote one or two of them out. And as he went along, he observed well the composition and elegancies, as if he not only wrote but heard them; which was great pleasure to him.

419. His lordship had not been long master of the viol and a sure concerteer, but he turned composer and, from raw beginnings, advanced so far as to complete divers concertos of two and three parts; which, at his grandfather's house, were performed with masters in company; and that was no small joy and encouragement to him. But it was not to be expected he should surmount the style and mode of the great music-master Mr. Jenkins, then in use where he came: and after his capacity reached higher he had no time to be so diverted. Yet while he was chief justice, he took a fancy to set to music in three parts a canzon of Guarini, beginning thus, *Cor mio del*, &c. In that he aimed to compass what he thought a great perfection in concert music; ordering the parts so that every one shall carry the same air; and, however leading or following, the melody in each part is nearly the same; which is, in composing, no easy task.

420. Not many years before his lordship was preferred to the great seal, he fell upon a pleasing speculation of the real mechanism whereby sounds are distinguished into harmony and discord, or disposed to please or displease our sense of hearing. Every one is sensible of those effects but scarce any know why or by what means they are produced. He found that tones and accords might be anatomized, and by apt schemes be presented to the eye as well as the ear, and so music be demonstrated in effigy. After

he had digested his notions and continued his schemes, he drew up a short tract which he entitled "A Philosophical Essay of Music;" not with the form and exactness of a solemn writer, but as the sense of a man of business who minds the kernel and not the shell. This was printed by Mr. Martin, printer to the Royal Society, in 1677. The piece sold well, and in a few years it was out of print and ever since is scarce to be met with but in private hands. If I may give a short account of his lordship's notion, it is but this. All musical sounds consist of tones, for irregular noises are foreign to the subject. Every tone consists of distinct pulses, or strokes, in equal time; which, being indistinguishably swift, seem continual. Swifter pulses are accordingly (in sound) sharper, and the slower, flatter. When divers run together, if the pulses are timed in certain proportions to each other, which produce coincidences at regular and constant periods; those may be harmonious, else discord. And in the practice of music, the stated accords fall in these proportions of pulsation, viz. $\frac{2}{1}$, $\frac{3}{2}$, $\frac{4}{3}$, $\frac{5}{4}$, $\frac{6}{5}$. Hence flow the common denominations of 8th, 5th, 4th, 3rd, 2nd; and these are produced upon a monochord by abscission of these parts $\frac{1}{2}$, $\frac{1}{3}$, $\frac{1}{4}$, $\frac{1}{5}$, $\frac{1}{6}$, of all which the fuller demonstration is a task beyond what is here intended.

421. But to accomplish an ocular representation of these pulses, his lordship made a foundation upon paper by a perpetual order of parallel lines; and those were to signify the flux of time equably. And when a pulse happened, it was marked by a point upon one of those lines and, if continued so as to sound a bass tone, it was marked upon every eighth line; and that might be termed the bass. And then an upper part, which pulsed as $\frac{2}{1}$ or octave, was marked (beginning with the first of the bass) upon every fourth line, which is twice as swift: and so all the other harmonious proportions, which showed their coincidences as well with the bass as with one another. And there was also showed a beautiful and uniform aspect in the composition of these accords when drawn together. This as to times. The ordinary collation of sounds is commonly made by numbers, which, not referred to a real cause or foundation in nature, may be just but withal very obscure

and imparting of no knowledge. Witness the mathematicians' musical proportion. His lordship did not decline numbers but derived them from plain truths. He found 360 the aptest for those subdivisions that music required; and, applying that to an open string or monochord, each musical tone, found by abscission of a part of the string, is expressible by those numbers so reduced in proportion. As $\frac{1}{2}$ of the string pinched off is $\frac{2}{1}$ or 180, an octave; and $\frac{1}{3}$ as $\frac{1}{2}$ 240; and so of the rest down to the tone or second, which cuts off $\frac{1}{6}$, and the semitone a $\frac{1}{16}$, &c.

422. The virtuosi soon took up this little piece and, during the nine days' wonder, were very busy about it. Mr. Matthews of Sidney college in Cambridge, was so affected that he made a perpetual comment upon it and took much pains to explain the doctrine of pulses by experiments; but these proffers are all mislaid or lost. I have been informed that Mr. Matthews left such, but could never find in whose hand. The ingenious Mr. Hook put this scheme of music into clockwork, and made wheels with small lingulæ in the manner of cogs, which moving each upon its pin as the wheel turned, struck upon an edge one after another equably; the wheel turning slow the pulses were distinguishable and had no other virtue; but then turning swifter the distinction ceased and a plain musical tone emerged. This for one. Then, another wheel was contrived to strike three to two (for instance) and as the distinction began to fail and continuation to take place, we might hear a concert 5th coming on, and settling in the manifest accord so named. Sir Isaac Newton, in answer to an inquiry what he thought of this piece, did not come into the solution of harmony by coincidences, which he said, and truly, cannot be the same to all ears (as the accord is) in divers positions; but, as his way hath been to refer to qualities, he styled an unison to be an harmonious consent; by which one understands nothing. But as to coincidences, if they are so at the instruments, the virtue is disposed *quaquaversum*, while the waves of the sounds enlarge every way, and the ear is affected with the order of them wherever it is planted. In 1682 Dr. Wallis published his Ptolemy, and subjoins a notable appendix of music ancient and modern, and pursues his lordship's

scheme, but in a different manner. In 1694, Dr. Holder's piece came out; but so puzzled with numbers that it is uneasy to read; and he makes great ado about dividing tones major, tones minor, dieses and commas, with the quantities of them; as most authors have done. All these works, as I judge, were spirited up by his lordship's essay which came out long before them. And ever since, the philosophy of music hath been more courted than formerly.

423. The other head of his lordship's entertainment is picture; a word I choose rather than painting; for of that I can ascribe nothing to him. He never took a pencil in his hand nor attempted any kind of draught excepting some mathematical diagrams and a little of perspective which is a branch of the mathematics. He had a good taste of picture, and knew wherein the worth of them consisted, and seldom failed to point at the faults and to declare the excellencies of a painting at first sight. His talent was not performing but judging; especially of what flowed out of the art of perspective, against which most faulty pieces are offenders. No man living had a juster idea of perspective than he had. Which assertion I make good by a fragment of his writing upon a piece of paper, viz. "Perspective is a projection of a concave hemisphere in plano, with straight lines; which is very imperfect and not tolerable in a large segment of a sphere; but will be perfect in a hemisphere, where the infinite distances terminate in a point, not only in a horizontal line but upwards and downwards and on both sides; and all straight lines, except those which are in the cross diameters, are described by curves." This needs a comment by explaining the whole art to make it to be nicely understood; which I shall not attempt here.

424. In the science of picture there is a skill peculiar to painters and such as practise draught; that is of the style and handling, colouring and manner of the noted masters, whereby the professors pretend to know copies from originals and the true sublime picture. All which flows from perpetual observation, instruction, and variety of experience; and an artist's whole life is little enough for gathering a competent qualification to warrant his judgment. His lordship always loved to see variety of good

pictures; but was a minor critic till his acquaintance and association with Sir Peter Lely was embraced; and then he began to see how little he understood of the matter. Sir Peter was a well-bred gentleman friendly and free, and not only an adept in his art but communicative and had a great collection, consisting of pictures from the hands of the best masters and a magazine of Scizzis and drawings of divers finishings, which had been the first touches, I may say the heart, of great designs and models, besides prints of the best gravers. His lordship had free access to these which, with the occasional comments of that great artist, were sufficient to establish (if not a critic) a true lover of painting.

425. The introduction to this acquaintance was by means of Sir Peter Lely's chief virtuoso friends about the court. For, after he was grown rich and had children, he often complained of the want of some good friends who might advise and assist him about settling his estate, that his children might be sure to enjoy what he should leave behind him. One of them asked him why he did not get acquainted with Mr. Attorney-General, who was the fittest person in England for his purpose; and he offered to bring Mr. Attorney one night to sup with him. This was no sooner said than done; and, from that time, the friendship betwixt them was struck up. What advantages either side had thereby will be mentioned in a proper place. How his lordship continued his favour and friendship to his son after his death, will appear when I come to show the part he acted in a more exalted character; and that is benevolence to all mankind, to which I now proceed. Wherein I shall demonstrate from numerous instances his universal inclination to do good to all men, according as worthy instances offered themselves.

426. I must begin at the lower form, which was his taking notice of young persons: he was no sooner arrived at man's estate and a shifter for himself, but he became a friend to others that lay behind and came after him; and he took a pleasure in doing things in a manner as might best please and divert them; particularly his younger brothers who, by way of fund for petit recruits of money, at all interviews used him as their own. And thereby he showed

his intrinsic good nature; for, if actions are to be prized by their effects, the greatest bounties among men have not a sublimer effect of joy than such liberalities to young scholars. But then he exacted a severe retribution of hard questions and puzzling fallacies of the literate kind put upon them, as was touched elsewhere; but they, with the prudence of their betters, pocketed up all such wrongs.

427. His lordship had an opportunity of doing one generous act with a *continuando* during all the rest of his life. It was taking care of the head of his family, as the northern men style the elder branch, or lineal heir of the old stock. This was Mr. Robert North, eldest son and heir of Sir Charles North of Walkeringham in the county of Nottingham. Edward Lord North, the first baron of his lordship's family, was a younger son of old Sir Charles of Walkeringham.¹ But (waving pedigrees) this gentleman's father was a cavalier, and persecuted in the rebellious times, and, after the restoration, or thereabouts, was made high sheriff of the county. His under-sheriff proved an insolent knave and his security insufficient, whereby great troubles and losses fell upon him; and he died leaving his family in a deplorable condition. He left but one son, this Mr. Robert North, but divers daughters and about sixty pounds per annum clear estate to provide for them all. The son had been well bred at school and could write well and was so goodnatured as to consider that, if he staid at home, without some beneficial employment, his sisters must want. Thereupon he took a resolution to go abroad and seek his fortune, leaving all he had to his sisters to make the best for themselves they could out of it and thought not of more for himself than he could gather by his industry.

428. Coming to London, what with writing and other officious services as by some acquaintance and recommen-

¹ This passage is curiously full of mistakes. (i.) Robert North was *not* son, but grandson, of Sir Charles North of Walkeringham. (ii.) Edward Lord North was *not* son of Sir Charles North, but his *second cousin*. (iii.) Robert North's father, Charles North, was *not* High Sheriff for the county, though his *great-grandfather*, Edward North of Walkeringham, had served that office in 1600. (iv.) Robert North's father, Charles North, was ruined by his father's—Sir Charles North—extravagance. The story of his having been a loser through the under-sheriff is a fable.

dation he found means, he poorly subsisted. It happened that Sir Dudley North, his lordship's father, wanting a clerk for his justice business in the country, took this young man who was recommended for a good writer, faithful and industrious. There was not at that time and for divers years after, any relation of him, to that family, known; but his behaviour made him esteemed by Sir Dudley North to the degree of a favourite. His design was to keep himself concealed and to bear his misfortunes within himself, as well as he could. But he lived under a continual resentment and melancholy, ever complaining of inward infirmities without saying what; and the family gave him for gone of the spleen. And in truth, even after his circumstances were mended, that infirmity had taken such root in him that it became habitual and he could not shake it off as long as he lived. So dangerous is it to let imaginations get the upper hand long together. Sir Dudley North observed such strong tokens of an inward discontent that he could not forbear urging him to say if any thing, relating to his service, was uneasy to him and he would take care it should be remedied. No, all was exceeding well and his place better than he ever hoped for or deserved. And Sir Dudley North so often urged him upon these points, and particularly of his country, family, education and the like, till he had extorted from him that he was the eldest son of the Walkeringham family; and, from that time, he was owned as of the elder house and lineal right heir of the family and treated with all possible respect and service. But still he kept his post and made no sign of any desire of a better.

429. During this time his lordship advanced in his profession and was made judge of the royal franchise of the Isle of Ely, and at his first assizes (with leave of his father) took this gentleman with him and made him his chief officer, and sent him home with good £30 in his pocket; for which kindness Sir Dudley heartily thanked his son Frank, as for so much done personally to himself. But this was an earnest of more to come after; for when his lordship was made attorney-general, he desired his father would part with him to come up and take the place of chief clerk under him, which was called of the confessions. And it was not

without the greatest reluctance that he yielded to it; and no inducement less than his beloved clerk's preferment, which of all things he desired, would have prevailed upon him to consent. But after that there was a notable stir to make the gentleman remove; and I was employed to work him to it. His spleen had such fast hold of his intellect that he could not conceive better than that, if he removed to London, he should fall sick and die by the hands of a nurse who would pluck away his pillow to get his clothes. But we got the better of him to accept of no small preferment and in the high way to greater; assuring him that he should have so much profitable business as not to dream of nurses, or any thing else but getting of money; and so the mouse was prevailed upon to enter into the Parmesan cheese. When his lordship was chief justice of the Common Pleas, he made his cousin North his clerk of the treasury, and when he was lord keeper the same kinsman carried the seal. His lordship used him in his most private and uncheckable trusts and would have treated him with more familiarity; but he absolutely withdrew himself from it and would be no other than a servant as long as his lordship lived. After he was dead, he took his habitation in St. Giles's parish; and all along was careful to provide for his sisters and their children, as well as he could. But there his spleen got ground of him; and having often surveyed the churchyard and the various situations of it (a melancholy employ) he showed his friends where he desired to be buried; and before his death often fed his spleen with walking to and fro to visit the place of his future residence; and in about four or five years time, after the death of his most honoured patron, he was (by the care of some relations that he had taken home to him) put in full possession of it. It may seem to many that, for the present purpose, this relation is too long (for impertinent it is not). But I considered that the redundancy, such as it is, may be indulged as a worthy remembrance of a most luculent example in which may be seen a due reward of exquisite worth, integrity, piety, patience, and perseverance, shining in the course of this excellent person's life; who, with less notice than here is taken of him (with the matchless pattern of his most recommendable character

and successes) would be as much lost and to all future times unknown, as the place where now his mortal remains lie.

430. There was a family of the Mordaunts in Bedfordshire fallen into decay, to whom his lordship had a relation by his grandmother who was of the Brocket family. The eldest and only son was left with an estate but incumbered almost to full value and which, without being speedily redeemed, must have been utterly lost. When his lordship was chief justice he sent for the young man and made him his crier. He bought of him the equity of redemption of his estate and having (as his design was) sold it again to Sir Creswell Levinz, paid all the young man's debts, gave him a full account, and paid him the overplus. But this frantic fellow took tetch at somewhat and ran away into Ireland. His lordship dispatched one of his domestics after him, who had the good luck to find him out and bring him, pennyless, home. His lordship did all he could to find out what was the cause that made him desert a good place, but could not. However he reinstated, and encouraged him all he could; but nothing would do; and he was finally ruined and lost. There was another family of the same relation, whose name was Trochee, numerous and in great want. He took one son to be his lady's page, and others he got bound out to trades or put in a way of living well, if they had pleased to conform. But a wild or idle spirit possessed them, and what was done for them proved abortive.

431. One gentleman, named Gilbert North, had his lordship's favour; and if his own personal failings had not worked counter to all his lordship's intentions towards him, he might have made himself considerable; but *ex quolibet ligno*, &c. He was a bastard son of Gilbert North, his lordship's father's great uncle,¹ by one that was called my Lady Venner. She married a pettifogger, one Smith of Berkshire, who bred up this youth towards the law by putting him into the society of the Middle Temple. His lordship took notice of him, and gave him all the encourage-

¹ Not great uncle, but uncle. He was a younger brother of Dudley, third Lord North.

ment he might. When his lordship was reader he made him his sub-reader, which showed him to the society and to men of his profession; and to qualify him for business so as to pick up a little, (for he had no manner of estate or provision) he was called to the bar, and his lordship bestowed plentiful advices upon him. But once he was very much surprised; for he asked the young man (then a barrister) if he understood law French? he said "No," but he intended soon to make himself master of it. From thenceforward all his lordship's hopes of him were vapid. But yet he continued a sort of occasional bounty to him and, when he had the great seal, he billeted him £60 per annum deep upon an office; which was duly paid him and just served him in the Friars,¹ where he had taken up his rest, to keep him from starving. After his lordship's death he perished, leaving his funerals for a legacy to the parish. I have here drawn out an account of this gentleman's stupid temper to show what a miserable case it is when men, having meat set before them, will not lift up a hand to taste it but perish for want. Many men would have given a round sum of £2000 or more, to have stood in his place. So we have bad as well as good examples, to instruct such as are pleased to mind them.

432. There was a family nearly related to his lordship, whose name was Chute,² where two younger brothers, his aunt Dacre's grand-children, were left without any family provision and had been gratuitously educated by their grandmother; but wanted to be put into the world so as to shift for themselves. His lordship placed the eldest of them with Dr. Brevint, a French refugee, and prebend of Westminster; where, by the family conversation as well as some instruction, he might acquire a ready use of the French tongue in order for a post he had designed for him as soon as he was capable. His lordship furnished him with money to pay for his residence there; and after six months finding him fit, recommended him to a clerkship under Secretary Jenkins; and, at the coronation, made him the prothonotary of the Court of Claims; which pre-

¹ Whitefriars, adjoining the Temple; formerly called Alsatia.

² See Author's Preface, § 3.

sented his cabinet with near three hundred guineas; and during this time and until (by the death of his elder brother) the capital estate of the family fell to him, allowed him £30 per annum. This gentleman hath ever since, upon all occasions, continually expressed his grateful acknowledgments for all this noble patronage without which he had suffered large decadences both of mind and body. The younger brother, being the grandmother's favourite, was by her placed at the Middle Temple. But withal he received great encouragements from his lordship, by presents of twenty and thirty guineas at a time, till a good match was found for him and, by friendship and money, he was lifted into an opulent office in the law; and his grandmother, dying, had left all she had to him. His lordship never cared to feed idle people; but if capable and industrious, he would always, if it lay in his power, find means to plant them in a way of employment; and his benevolences were for the most part directed with such views.

433. But these are remote instances; I ought to come nearer home and take an account of his benevolences to his paternal relations. His youngest brother (the honourable Roger North) was designed by his father for the civil law, as they call that professed at Doctors Commons, upon a specious fancy to have a son of each faculty or employ used in England. But his lordship dissuaded him and advised rather to have him put to the common law; for the other profession provided but for a few and those not wonderful well; whereas the common law was more certain and, in that way he himself might bring him forwards and assist him. And so it was determined. His lordship procured for him a petit chamber, which cost his father £60 and there he was settled with a very scanty allowance; to which his lordship made a timely addition of his own money: more than all this, he took him almost constantly out with him to company and entertainments and always paid his scot; and, when he was attorney-general, let him into a partnership in one of the offices under him; and when his lordship was treasurer and this brother called to the bar, a perquisite chamber worth £150 fell; and that he gave to his brother for a practising chamber and took in

lieu only that which he had used for his studies. When his lordship was chief justice he gave him the countenance of practising under him at *nisi prius*; and all the while his lordship was a housekeeper his brother and servant were of his family at all meals. When the Temple was burnt he fitted up a little room and study in his chambers in Serjeant's-Inn, for his brother to manage his small affairs of law in, and lodged him in his house till the Temple was built and he might securely lodge there. And his lordship was pleased with a back door in his own study by which he could go in and out to his brother to discourse of incidents; which way of life delighted his lordship exceedingly. And, what was more extraordinary, he went with his lordship in his coach constantly to and from the courts of *nisi prius* at Guildhall and Westminster. And, after his lordship had the great seal, his brother's practice (being then made of the king's counsel and coming within the bar) increased exceedingly and, in about three years time, he acquired the better part he afterwards was possessed of. At that time his lordship took his brother into his family, and a coach and servants assigned him out of his equipages; and all at rack and manger requiring only £200 a year; which was a trifle as the world went then. And it may truly be said that this brother was as a shadow to him as if they had grown together. And, to show his lordship's tenderness, I add this instance of fact. Once he seemed more than ordinarily disposed to pensiveness even to a degree of melancholy. His lordship never left pumping till he found out the cause of it: and that was a reflection what should become of him, if he should lose this good brother, and be left alone to himself: the thought of which he could scarce bear; for he had no opinion of his own strength to work his way through the world with tolerable success. Upon this his lordship, to set his brother's mind at ease, sold him an annuity of £200 a year, at an easy rate upon condition to re-purchase it at the same rate, when he was worth £5000. And this was all done accordingly.

O et præsidium et dulce decus meum.

434. His lordship had two brothers, merchants, and was very indulgent to them both. Of the first, which was Dudley, we have spoke already. The other brother, Mountagu,

from a mercantile education was sent out to be factor also at Smyrna, and his lordship made him the like loan as he did his brother Dudley before; but, for his encouragement in trade, he put £1000 into Dudley's hands to trade for him; to the end that his brother Mountagu might have the benefit of the factorage. But at length this method was found inconvenient, and like to make a great perplexity in accounts; or rather not consonant to the rules of the Turkey company; for free merchants ought not to trade for others not free. Therefore the account was turned into an imprest at interest, and restitution by a due repayment of the same was made accordingly. And, as money yielded in those parts, a loan from England of £1000 was a pension of value in Turkey.

435. Thus much for his lordship's brothers. It remains to show him no less successfully benevolent to his sisters; of whom only two, Elizabeth and Ann, remained unmarried. His lordship's father designed some skirts of his estate to be sold, to raise £1500 a-piece for their portions; but no proffer falling the land was unsold. His lordship, by means of his acquaintance in the Lord Grey's family, found an opportunity to bring forward a match for the younger of his sisters, Elizabeth, with Sir Robert Wiseman, a civilian, and dean of the arches.¹ And this was through Mr. R. Grey's wife (Ford) who, having acquaintance with and being much respected by the knight, never left till, through decent steps and formalities, the match was made; and his lordship advanced the portion.² He was an old man, but very rich, and withal a most just and good-natured person. He made no other settlement than, by a bond to leave her portion doubled, and said that, "it not being prudent to exceed the ordinary measure in those cases, he would do no more;

¹ Author of a treatise entitled "The Law of Laws, or the excellency of the Civil Law," London, 1664.

² This marriage took place 24th September, 1672, when Francis North was Solicitor-General, and ten years before he became Lord Keeper. The Mr. R. Grey of the text married Catherine, daughter of Sir Edward Ford, and succeeded as second Lord Grey of Werke in 1674. His sister, Catherine, married Charles, elder brother of the Lord Keeper, who became fifth Lord North of Kirtling.

but he would not have it thought his intentions were confined to that." After divers years living very happily together, this gentleman left her, at his death, near twenty thousand pounds.¹ And it was egregious to observe the more than brotherly correspondence his lordship maintained with Sir Robert; for he frequently made him presents, which he contentedly swallowed, and advised him in his money matters; and not seldom, when he scrupled venturing to share in securities, his lordship took his money and paid him the interest. All which, together with frequent intercourse of visits and friendly, I may say learned, conversation, for both were judges in their respective courts, kept the old man in good humour, ending as I have hinted.

436. His lordship was no less disposed to procure a settlement for his eldest sister who had, in that respect, some disadvantage; and seeing that could not be done on a sudden, and in the mean time she was left alone without company, her parents old and seldom visiting, he contrived to ease her mind and to make her life more comfortable. She had a great dread of being left to any dependence on her elder brother,² which added to the irksomeness of her solitude in the country. His lordship, who was an artist at obliging, prevailed with his parents that she might be with him and keep his wife company; and he pressed also that, since she had lived so long single and that there was but a doubtful prospect of any match fit for her, his lordship would put into her own hands that fortune he intended to give her; and to make all easy, he would become purchaser of those estates that were the fund for raising these portions, and clearing his father of all debts on that account. The old lord admired the generosity of his son, and consented to all; but instead of £1500 he would put into her hands but £1200. Hereupon she was removed to London and lived with the Lady Frances in all the content that she was capable to enjoy. But, as old folks are apt to be jealous, so this good old lord suspected that his son

¹ The lady afterwards married William, Earl of Yarmouth. (*Collins*, iv. 295.)

² *i.e.* Charles, afterwards fifth Lord North.

Frank intended to make his sister pay for the board of her and her servant ; which never entered into his thoughts. But when he heard that all was gratuitous, he was extraordinarily pleased and solemnly returned his thanks to his lordship for his goodness to his sister.

437. It was not a little propitious that this lady was settled under such an honourable protection as she had by her brother in London, who, having her so near at hand, might better conduct any proposal of a match for her (if any such came in the way) than if she lived remote from him in the country. It fell out that, by means of one Mr. Henry Parker,¹ related by his match with one of the Hydes, a proposition was made to his lordship for a match of this sister with the only son of Mr. Robert Foley of Stourbridge in Worcestershire. The father was, by contract, ironmonger to the royal navy. That name and family sounded rich ; and this branch had its share but declining, as I shall show. His lordship joined and treated for £1500 portion, and a jointure of £400 a year. The old father fancied that a friend at court, so considerable as his lordship was, might be useful, which, together with his lordship's skill in dealing with such a touchy spark, drew a full consent to all. The young man was every way acceptable and, left to himself, would not have chosen one that was fifteen years older than he was. But finding that his father, by negligence, sottishness, and desperate projects, was in a fair way to utter ruin, he was glad upon any terms to get the estate settled ; wherein he considered wisely, as in consequence plainly enough appeared. In short, the marriage was solemnized ; and his lordship ordered not only a sumptuous dinner but a copious supper at night, and all the near relations, of quality, were invited ; which, in all respects, appeared most generously kind and honourable. The new-married couple lived many years very well together ; and, as old as she was, she had many children, lived to see them men and women and, having outlived her husband, at her death left them all in good

¹ This was Sir Henry Parker, of Melford Hall, Suffolk, Bart. He married Margaret, daughter of Dr. Alex. Hyde, Bishop of Salisbury, and succeeded as second Baronet at the death of his uncle in 1697.

circumstances. His lordship, finding his sister's family increase so fast, came up to his brother Foley and, smiling, "You see now," said he, (as he was always facetious) "what comes of marrying a young wife."¹

438. This lady, with so little appearance, in truth proved an overgrown fortune to her husband; for his lordship, for the most part while the old father lived, kept them in his house; for the present maintenance was straight. He was made Marshal in the circuits which brought in pence; and, after his lordship had the great seal, secretary to the presentations, worth (honestly) near £300 a year; and he lived all the while with his family at rack and manger in the house. But what surmounted all was the aiding him with his purse, as well as advice and countenance, in working through a most perplexed administration of his father's personal estate. The old man died without a will; and his great dealings of divers kinds all in confusion; and it was very questionable whether all he left when got in, which might amount to about £10,000 would serve to clear his incumbrances, which were suspected to be as much or more. The assets were of divers kinds, some legal, others equitable: but the debts most by bonds and counter-bonds, and the creditors all in haste to be paid. So that it was a dangerous undertaking; and most of his relations, who, by counter-bonds were his greatest creditors, were of opinion he should renounce; and then perhaps the administration would fall into their hands; and by that means they would be secure themselves. But his lordship encouraged him to take upon him the administration as a duty to his father and honourable in itself; and showed him that, taking a right course, he would be no loser; and he determined accordingly. The danger lay in an unhappy point of law: for if two *plene administravit*s are tried at the same assizes, the assets found at one trial will not be allowed in the next for a discharge of so much. This made the creditors all fly at him at once, each striving to get the start at law. The advice in this furious case was that he should, in the first place, confess judgments to his kindred for the penalties of their counter-bonds, and plead those judgments to

¹ The Foley marriage took place in 1674.

all other actions against him, with a *non assets ultra* ; and fraud could not be replied because there was a real debt at the bottom of each, though not so much. By this means he covered his assets from being tormented at law ; and then, by a bill in chancery, he called all the creditors together to prove their debts and take what the court should order ; and withal exhibited an account of all his assets, pretending no advantage to himself or partiality to any. The creditors seeing this fair proceeding, rather than to contest accounts, came to terms and agreed to take shares and installed times of payment. This gave him time to turn himself and to make the best of his assets ; and in the mean time his lordship, upon such security as he could give, laid down all the money as the creditors called for it, and took from his brother the money as he could raise it ; and in the end made an account of interest in and out, as the method in such cases is ; and so, with above £500 advantage in his administration, perfectly set him clear. Such a felicity is a friend at need : and what a generous principle is it to be such a friend, when also good counsel and sound judgment of safety concur !

439. I have here showed how a half-decayed family with a numerous brood and worn-out estate, of the Norths, by the auspicious character of one child of ten was re-edified ; and all the rest lifted into the world with wonderful success ; and no one of the whole pack miscarried or were not in all respects (the eldest excepted)¹ mutually helpful and assistant to each other ; and none of them tainted with any vice or dishonour, nor the least favour of difference or feud found amongst them ; but, from the first to the last, they maintained their fraternal amity and correspondence inviolable. I say (not derogating from the influences of a virtuous parentele) most of all these felicities were derived upon the patronage of his lordship, who may justly be styled the

Column familiæ et fastigium domûs.

440. But now we dismiss the family and advance to his

¹ This was Charles, fifth Lord North, summoned to Parliament in his father's life time as Lord Grey of Rolleston.

lordship's benevolence to others. There was a young gentleman known by the name of Charles Crompton; he was bred up by Sir Henry North of Mildenhall and shrewdly suspected to have been his natural son. A wilder character of a man never was known; but withal he had some extraordinary talents, as industry for example. If he fancied to write out a book, he would sit at it as a hen upon her nest and deliver it with scarce a sully or blot in it. He had an inexhaustible vein of artificial nonsense and, at any time, if desired, would write a letter of such incomparable stuff as, from a poet, would have passed for wit. He had a good estate in Yorkshire, and as soon as he was of age, he repaired to London in quest of those joys which young heirs dream of to be had there. He was soon scented by the Voltiores and Corbaccios, who had fairly begun to pluck him; but he died before his estate was half eaten. His custom was to visit his lordship with view of borrowing; and his lordship was diverted by his amazing extravagances of discourse, and frequently lent him small sums upon his notes; but not without the superfluity of good counsel. He not only diverted but instructed his lordship in all the rakery and intrigues of the lewd town; and his own follies were his chief subject to rally upon as he did with most lively description and wit: particularly his being cheated of his best horses brought up to him from the North and bubbled into a duel, which came off with an acquittance signed upon the cheat's back in the field, and was the very action which Mr. Etheredge describes in his play of "Love in a Tub." His lordship, perceiving this young gentleman going precipitously down hill to ruin and that the scriveners had got hold of his estate, omitted no opportunity, with argument and demonstration, to make him stop his career: and he promised to take his counsel for he feared but two things; one was that he was Sir Henry North's bastard and the other that he was a rank coward, which, known in town, would disable him to live in it. Once in a melancholy humour, he would make his will and his lordship must write it; which he did and, after providing for his debts, he gave all to his sister. "But," said his lordship, "I hope to live to spend it myself." "Ay," said he, "write

that and add to the wonderful improvement thereof." This was done and the will signed and published; by the title of which the estate is held at this day. After this he came to his lordship in the habit of a London 'prentice, and declared he was a going to bind himself to a merchant. His lordship bade him consider well, for by his indentures he would be bound to live chastely. "Ay," said he, "I have a trick for that; for I will find a merchant that hath a handsome wife and lie with her during my time; and that will save my indentures." But enough of this bizarre monster, whom his lordship laboured to preserve but could not. He died not long after; and what was left came to his sister. The younger Sir Henry North courted her, and they seemed agreed but did not marry; which was thought to proceed from a scruple of conscience upon a point already hinted. However when she died, she left the estate incumbered as it was to him, and he was forced to stand a long and stiff chancery suit with the heir-at-law, who insisted that her gift was not a benefit but a trust. At length the cause was heard before Judge Twisden and two masters; and he dismissed the bill, declaring that the lover deserved more than *laborem* and *sudorem*, or as we say in English his labour for his pains. And then his lordship, who had advised and assisted throughout the process of this cause, completed the service by taking in the mortgage and discharging the usurious trade which had been driven with it, and paid the money to Sir John Duncomb who, seeing only a short assignment indorsed for him to seal, "What," said he, "is this all that Mr. Attorney requires? G—d d—mn all these lawyers; for here's a mortgage scrivened up to ten skins of parchment; and the king's attorney-general is content with six lines."

441. His lordship always delighted to redeem his friends out of usurers' clutches and so, without any loss or hazard to himself but by retrenching charges and interest, exceedingly befriended them. And this he did for a relation on the Whitmore side, Sir Charles Kemish of Glamorgan-shire. He had been very wild and had dipt his estate £6000 deep by mortgage to an old usurer in London, at six per cent. He dealt by a scrivener who was an artist;

for, besides continuance money, he made him come to his house every six months to seal new defeasances which increased the charge at every instance. He complained to his lordship of this usage and had directions from him to give notice, as of course, to receive his money, and he should have it of him at five per cent. and be at little charge in the transfer. The assignment was approved by the old gentleman's counsel, and ingrossed with the common covenant against his own acts. At the day the old fellow came but would not seal; for he would enter into no covenants. His lordship was sent to for directions, and he ordered that the money should be paid upon a common acquittance without his sealing, and, rather than fail, to pay it him and keep only a private memorandum of it attested. The old man, seeing this close play, and foreseeing the consequences which were (not taking the money) to lose his interest and be forced by decree to assign at his own charge, thought fit to seal the deed as it was; and there was an end. I cannot forbear, for the credit of the Welsh country, to remember an able steward Sir Charles had who solicited his money matters for him. He was a thinking careful fellow and all tending to the good and safety of his *mester*. Nothing could persuade him but that, if interest was not paid at the day, his *mester* must lose his estate; and on that account he never failed to bring up the interest, and pay it half-yearly. How much a better man was this than a wit!

442. I have mentioned already his lordship's engagements of friendship with that great master of painting, Sir Peter Lely. His lordship considered that if he being a foreigner (though naturalized) should die, his estate, by reason of some circumstances, would go to the crown and not to his children, unless he made settlements by deed or will in his lifetime. This startled the good old gentleman, who begged that his lordship would put the matter in execution for him; and it was soon done according to his mind; and his lordship told him withal that he would present him with a trustee, meaning his younger brother, that should be worth an estate to him. This timely provision saved the estate. How, after his death, that trustee conducted the disposal of his pictures &c. and bred up his

children, was well known by the whole nation of virtuosos both at home and abroad. On the other side, Sir Peter Lely presented his lordship with excellent portraits of him and his relations, which are still extant and of great value; and between them this was called commuting of faculties. But it fell out unluckily that his mansion-house at Kew-Green, being copyhold of the Duke of York's manor of Richmond, was not surrendered; so that, for reasons hinted, that, for want of a heir, escheated to the lord of the manor; and a courtier straight begged it and had a promise. Upon this, his lordship's brother advanced his petition and solemnly begged this escheat, and his lordship joined his request for the benefit of young Lely. About this time the Duke was in Scotland, and his lordship was pleased to write to Sir John Werden, then in waiting, to prefer his request to his royal highness; but, having no satisfactory answer his lordship wrote to old Colonel Werden, more pressing and particular. Which letter, being very expressive of his lordship's sincerity and good will to his departed friend as well as duty to his royal highness, is here subjoined.

443. "SIR,

"WHEN Sir John Werden was in Scotland, I desired him to present a humble request to his royal highness on the behalf of Sir Peter Lely's son. Sir John was so kind as to embrace the trouble and wrote me word that the Duke was pleased to receive the motion very favourably, but deferred to determine any thing upon it until he had an account of the thing from Sir Allen Apsley. I spoke with Sir Allen who gave me the most specious promises imaginable; but, not hearing since that the matter is any way advanced, it is my desire that you would be pleased to renew my suit to his royal highness. The case in short is this.

"Sir Peter Lely purchased of one Mr. Mountney a small copyhold of £19 per ann. It was holden of the Duke's manor. After the surrender and before any court-baron he died; so that he was never admitted tenant to it. Sir Peter's son being born before marriage, cannot by our law inherit, though he be legitimate by the law beyond sea; and Sir Peter could not settle it upon him as he did his

other estate because he was not admitted. Hereupon the son cannot claim it. But whether Mountney shall keep it or it be escheated to the Duke, may be a question. Mr. Mountney gives his pretences to the child. The trustees for the child are very sensible how indecent it will be for them to have a contest upon the Duke's title, and desire by all means to avoid it. I have advised them to submit to his royal highness; which I make no doubt they will do although they tell me they have learned men's opinions that it is no escheat.

"Now, sir, whereas there be two fines due upon this estate, viz. one upon the purchase, another upon the death of Sir Peter Lely, which fines I suppose will be set at fifty pounds or under, if his royal highness will command his steward to set twice as much as otherwise the fines will come to, it will be very gracious.

"It is my earnest desire that the Duke would be favourable and not look upon the thing as forfeit, and the favour will be acknowledged as if it were. I wish I could be thought to merit such a boon, but my small sphere gives me no capacity; and indeed I already owe all I have to his royal highness's favour and therefore owe all I can do to serve him; from which I shall never be diverted by fear or any other consideration.

"Sir, I ought not to think that I have troubled you too long, considering I have another favour to beg of you, which is, that you would be pleased, at your leisure, to let me know if I may hope for success. By that and your pardon for this trouble, you will extremely oblige, &c."

444. I have given this letter in the very words because, if it is well considered, it will appear to be candid, respectful and, for the purpose, charming. But this instance verifies the opinion some had of his lordship, that he was no courtier; for when did any such ever spend their own interest in procuring a boon for a friend? and much less when it is for a child on account only of friendship had with its deceased parent, whence no return is to be expected but the conscience of having done a generous action.

445. His lordship endeavoured to preserve a livelihood to a poor woman: it was one Mrs. Jackson, who had a

family and fell under the misery of having her husband hanged for coining; but upon the testimony of persons worse than himself and, considering the officers of the mint and the trade some of them drove at that time, as like to be false as true. After his lordship had done what he thought reasonable in his own person, he seconded the disposition of a friend by instructions, of which I find a copy under his own hand, which is as follows.

446. "One — Jackson, widow of — Jackson, who was executed at Tyburn for coining, petitioned his majesty for a grant of her husband's goods for her subsistence. I moved the king in her favour and the king referred her petition to the lords of the treasury.

"Her husband was a very ill man; but her friends are very loyal and good; and, for their sakes I was desirous her husband might have been pardoned which had been moved by the Duke of Albermarle. But because the prosecutors were the officers of the mint and the crime was rife, it was thought a pardon would have done great prejudice to the public. His case was this:—

"A fellow was accused for clipping who had no way to get off but by accusing others; he accused this man, (who had been one of his companions in roguery and lent a room to work in and sold silver for him, but denied at his death that he ever joined in clipping with him, as he swore at the trial), and this man was bound over, but at the sessions had nothing to say against him; whereupon he was discharged. For fear of this the witness gets him taken up again and, though he said nothing against him at the former sessions, now he preferred an indictment and swore so fully that he was convicted and hanged upon it.

"He denied the fact at his death, though he confessed many ill things against himself; and, which is very observable, the witness was committed afterwards for stealing and was hanged himself.

"After all this set down, I hold no argument ought to be made with such a reflection on the proceedings of justice; but the only argument will be that her friends are very loyal. She was a gentlewoman of a good fortune; and it is but a small matter that is left; and it would be hard she should be utterly ruined when her friends had interest

enough to have got her husband's pardon, if the example of the public had not been concerned.

"It need only be said I recommended it, unless the particulars are asked."

447. What was done in this matter is not now material to be known. The design of this paper was to get a favourable report from the treasury upon the woman's petition. The whole tenour of it shews a just and compassionate mind and judicious expression; for which reason I have given it in the very words, for no epitome is sufficient.

448. I think it is of small moment to give an account of some pecuniary benefactions, as to Trinity college library in Cambridge, Trinity college in Oxford, and the parish-church of Harlow, and some others; because they were not great. It is enough to say that his lordship was a noted encourager of all learned foundations, societies, and persons; and most of all, the conformable clergy and their dignified superiors. He never failed to do them justice; which being their due, no thanks to him; but only as it was a strain of popularity to do them wrong. He revered their order, and advanced rather than stayed to be importuned for his acts of benevolence and advices. He used to discourse familiarly with them, and communicate his schemes, as he thought might aid their understandings in the conduct of their common concerns. And he used to take a freedom to ask their thoughts in questions of history, theology, and civil law. He advised them to study more of the common law than was ordinarily found amongst them. He had a great respect and value for the incomparable Dr. Hickes, sometime dean of Worcester. His lordship had knowledge of him first at the Duke of Lauderdale's, where he attended as domestic chaplain. He was a truly venerable, learned and pious Christian minister, of a primitive spirit, patience and resolution. In his stupendous work, entitled, *Thesaurus Linguarum Septentrionalium*, &c. in his preface to his grammar, *Franco-Theotisca*, fol. 8, he gives this testimony of his lordship's goodness to the clergy.

449. "Ante sedecim aut eo plus annos, vixit vir amplissimus sapientissimusque et sui temporis jurisconsultus sine pare maximus, Franciscus Dominus North, Dominus Guilford, Carolo 2°. et Jacobo 2°. R.R. Angliæ magni sigilli

custos, qui me multum et familiariter utebatur. Itaque multa ab eo prudenter disputata multa etiam breviter et commodè dicta memoriæ mandabam, ut qui fieri semper studebam illius prudentiâ doctior. Is autem, cum sæpe multa narraret, tum præclare memini domi in cœnaculo sedentem, cum et ego essem una et pauci familiares in sermonem de proceribus sacerdotii incidisse; in quo episcoporum vicem magnoperè dolebat vir maximus; utpote quorum auctoritatem diu in senatu labefactatam tum ferme jacere dicebat, ex eo quod ad rotulorum parlamentariorum studium contra prædecessorum suorum qui in anterioribus sæculis flourissent, minime animos appulissent. Memini etiam sæpius audivisse illum vehementer hortari egregios è clero viros, tum qui facti episcopi erant tum quos ad episcopatum destinatos esse sciebat, ut in rotulorum istorum studio quas senatoriarum rerum quasi biblia appellabat nocte dieque se exercerent."

In English to this effect:—

"About sixteen years ago lived that great and wise man, and the ablest lawyer of his time, the Right Honourable Francis North, Baron of Guilford, Lord Keeper of the great seal to King Charles and King James the Second. I had the honour of being one of his particular acquaintance, which gave me frequent opportunities of treasuring up in my memory many of his instructing discourses and no less excellent sayings; which I never failed to do, being ever desirous of gathering from him wherewith to add to my own stock. But I remember once in particular, that this noble person whilst he was sitting in his parlour with only myself and a few more of his friends, took occasion to enter into a discourse of the prelates of our church; wherein he expressed great concern for that order; in regard that the respect formerly paid them, after having been upon the decline for these many years, was now almost quite laid aside; which he attributed to their neglecting to study the parliament rolls contrary to the custom of their predecessors in former times. I have likewise often heard him earnestly recommend the study of those rolls to some of the greatest divines, as well those that were already bishops as those whom he knew were designed to be made so; because he

said that, as to all parliamentary transactions, they were a very bible."

So testifies this great man, who cannot be accused of flattering a person then dead.

450. There are many passages in the current relation of his lordship's life, which might fall in properly here; as the constant war he maintained against all monopolists, projectors and other deceivers of the people; but being of a public quality I have not drawn them down in this place: only I must add here as a negative benevolence, if I may, with respect to the actions of some others, so term it; that, when forfeitures of goods and estates flew about at court¹ and the harpies continually begging them, his lordship never had a thought of profiting to himself out of the misfortunes of families, as when the Lord R[ochester] obtained the Lord Grey of Wark's estate and the Lord J[effreys] that of Prideaux, &c.;² but on the contrary, as in the case of Jackson, where he saw reason, inclined to assist the miserables: and once when his lordship interceded with King Charles the Second for his favour to one that was obnoxious, "It is very strange," said the king most facetiously, "that every one of my friends keeps a tame knave."

451. Let us now retire with him into his family, and show what he was in his private character and how he passed his time when at a distance from the public stage; and there show him a no less indulgent master than, as we have before demonstrated him to have been, a most serviceable friend.

452. After the death of his lady, his lordship parted with his house at Hammersmith and passed much of his vacation-time at his great house in Wroxton, where he had usually with him his two brothers (one of the three being not then returned from Turkey) and his sisters with their appurtenances, a company which he styles in one of his papers *Societas exoptata* or the company he was most desirous of. And those he never cared to be without when he might have them. At London they fell into a cursory good fellowship, I mean in a civil sense; for every Thursday night the

¹ See a curious instance of this in *Sir J. Reresby's Memoirs*, p. 34.

² On these confiscations see *Macaulay's Hist.*, chap v:

meeting was at Sir Dudley North's in the city, and on Sunday with his brother at his Chambers in the Temple ; but at his lordship's almost every day. Which felicity had no alloy until the appointments were known, and then some friends at large would find them out which was not so well.

453. In the country his lordship entertained himself with setting his great house in order ; and although he was afraid of building lest he might find himself engaged in over-expensive undertakings, yet he ventured upon a large order of stabling very stately and convenient ; and he built from the ground a withdrawing-room and back stairs and finished up the rooms of state, as they were called, and shaped the windows, which before had made the rooms like bird-cages. He never would hearken to any designs of waterworks or gardening, although the situation was billy and in some respects very inviting. But yet his brothers were always measuring and mapping ; and these modellings pleased his lordship to look over and wrangle with them about.

454. He was a very indulgent master to his servants, and never parted with any but for knavery (when it appeared to him) ; and of that I knew but one instance, but that was a flagrant one. When he was solicitor-general, he took one John Zacharias Smarthwait, a fellow of good address and creditable, and made him his chief clerk. When the town of Taunton-Dean renewed their charter this forward fellow got to be employed in it : he imposed upon their credulity, pretending much service by his attendance upon Mr. Attorney, and in the end cheated them of £200. His lordship neither allowed nor knew of any such trading ; and it no sooner came to his knowledge but he drove him away as an infection, leaving him to the town to worry as they thought fit ; but he was secure in being worth nothing. However they had a revenge ; for he died a beggar and crippled with the pox in White-Friars. His lordship's indulgence to servants cost him very dear ; for most of them were but eye-waiters and diligent only for fear of losing their places, otherwise negligent and wasteful. And he used to complain that he could not turn away an unprofitable servant without being urged as if he went about to ruin the fellow.

455. His lady had much of the same good-nature; and did all she could that the old servants might not think she wrought any thing prejudicial to them; and when his lordship mentioned any design of reform amongst them, she would say, "No; for then they would be worse than they were before." She had found out when her husband had any trouble upon his spirits; and she would say, "Come, Sir Francis," (as she always styled him) "you shall not think; we must talk and be merry and you shall not look upon the fire as you do. I know something troubles you; and I will not have it so." With many such obliging importunities she put him out of his dumps. And these kind forms never offended him as morose persons are often offended; but he corresponded with cheerful and engaging replies. And on the other side he was always tenderly concerned for her in all her sicknesses; so that her infirmities were not of one but of two. And he always consulted and conferred with her physicians about her regimen, in order to better health. And in the furnishing her with jewels, plate or furniture, he always complied with her desires, which, circumstances considered, were not at all unreasonable.

456. After a competent time, his lordship was not without thoughts of matching himself again; and beadrolls of reasons, *pro* and *con*, presented themselves to his mind which took up no small time to digest, and thereupon with a clear satisfaction to determine; and at last the negative carried it. The chief reason which he declared, was that he would not have two broods in his family, to perplex him and endanger the bringing disadvantages upon his children by the first venter. And thereupon he lived a virtuous widower without scandal and much to his honour, all the rest of his life. But afterwards in his last sickness while he was drinking the waters, he seemed to repent that he had not taken a wife; for then he thought that such a friend would have instructed him in a better regimen of health, as letting blood and taking physic sometimes, which he had not done for many years and might have prevented his fever. Besides he fancied that, in the night, human heat was friendly. Once he was in a humour to blame his family physician for not watching his health

better and (almost) forcing him to take physic. But, when he was told that he used to repel from him all overtures of that kind, he seemed satisfied and said no more. I remember he once asked his physician if he could cure his course of spitting which was very troublesome. "Yes," said the doctor. "But then," answered his lordship, "will not that bring upon me worse inconveniences?" "I cannot answer for that," said the doctor. So the cure of his best cure was not entered upon. When, after his lordship's death, the apothecary's bill was paid; the man, irritated with the executors' expostulations about the prices and the length of it, laid all the fault upon the physicians, saying, "he was to dispense what they prescribed; and that my lord keeper had been all his life an enemy to physic; but now he thought that physic had met with him."

457. After his lordship had the great seal his economy in London was very much altered. He had his stables adjoining to his house and a formal (good for nothing) master of the horse; but he was an old cavalier and a neighbour and acquaintance of the Wroxton family, and could smoke and taste claret; which qualifications supplied care and skill in his office. There was a *major-domo*, or rather prefect of eating; and having a good stroke of his own was fit for the employment. His table, which comprised the gentlemen servants, was kept in good order; but the inferior servants ate like harpies at the catch and, to say truth, most scandalously. Those whose office it was to observe them gave themselves no trouble with such matters; and his lordship knew nothing thereof. What fell in his view, which was the butler's and waiter's offices, was very well performed. He had one gentleman waiter who was of a singular character; he was an arrant coxcomb, void almost of common sense and yet the most exquisite observer of his duty in all formal respects. He was as sure at call as the door-post. I never knew any one at the table look as wanting any thing, that he had not instantly in his eye and readily served. And to give one instance for all to show the top of his formality: in travelling, if he were detached upon a message, he did not turn and go off directly, but rode before and planted himself as making a guard till the coach went by, and then made his

devoir; as much as to say, "I observe your commands; and have you any more?" With these observances he got credit with his lord and all the family; and dying as he did, of a pleurisy, was accounted a loss not easily supplied. His lordship's custom was after dinner to retire with his company, which were not a few and of the best quality in town, into a withdrawing-room; and the tea-table followed where his youngest brother officiated; and him his lordship often set at the head of his table, for want of a lady, to carve. His suppers were in another room and served in a more familiar way, and where his best friends and some (painted) enemies ordinarily assembled. And this he thought the best refreshment the whole day afforded him; and before twelve he retired and, after a touch of his music, went to bed: his musician not leaving him till he was composed. So that never any person had more assured witnesses of his conversation than he had; and if ever music was a relief to a mind overwhelmed with troubles, it was so with him.

458. Hitherto of his lordship's retiredments, but chiefly within his private economy, relations, and servants; without looking into the public and as if he had nothing to do there; which, perhaps, may have led us to touch upon circumstances less proper to be noted in a life of his importance. But now I must cashier all those matters and retire with his lordship into his solitudes, and show him there as he was both a moral philosopher and a good Christian, incessantly labouring to improve the faculties of his mind, and also to coerce all exorbitances as well of his inclinations as passions. And if we find any real symptoms of his prudent, faithful, and (I had almost said) prophetic speculations, regarding either himself or the vast consequences of his employments, we shall lay hold and make the best we can of them, and say with Virgil,

— " paulo majora canamus."

So I proceed to note his lordship's manner of direct and reflex thinking, and what endeavours as well as artifices he used to keep his mind at ease, his judgment steady, and, when wavering, to confirm it.

459. His lordship was sensible of many natural infirmi-

ties. I have already mentioned his innate modesty and how apt he was to passion and, upon any offence, to inflame; and more than ordinarily inclined to be amorous: not forgetting that, coming into the world with little in present and nothing expected from his family, he was very solicitous of keeping within compass and then to improve his fortunes. And yet he broke through his temper and acquired a commendable assurance, and kept under his passions to such a degree as made him be thought mild and dispassionate; and, while unmarried, lived virtuously and without the least scandal or occasion for it; and as his condition mended, became easy in his expenses and bountiful to many. It may be now asked by what arts and assistances he gained these great victories over himself. I must answer first, in general, that strength of reason and rectitude of will gave him such a mastery over his temper: but withal, 1. That when he fell under any deliberation of great concern to him, and the point was nice and stood almost in *æquilibrio*, he took his pen and wrote down the reasons either way as they fell in his mind, in any words or manner of expression, and had that paper for the most part lying in his way; which gave him frequent opportunities to weigh the cogency of them. 2. When he observed himself in his mind unsteady, or disturbed, he set down the truths that ought to confirm him; and so upon occasion of divers emergencies of his life. And these he titled *speculums*,¹ which frequently admonished him of some growing fondnesses: for when he perceived the rising of them, he took up his *speculum* which soon reduced them. Of these *speculums*, he had many that lay loose about his desk; and but few of them are come to my hand: and some of such as I have, I shall present as specimens.

460. His lordship, by certain symptoms, observed some mischief brewing at court which drew him to set down these notes, that he might often reflect upon them.

“Why hastened?”

What the matter was which occasioned this query, I

¹ The English of this word is a looking-glass, or mirror, wherein any one may see his own image. And from thence his lordship, by a metaphor, called these papers *speculums*; because, as a man looks in a mirror in order to be acquainted with his outside; so by looking upon what

cannot remember, nor with clear satisfaction guess. Probably it was the reform of the council, whereby the Lord Shaftesbury, and all the mal-contents were let in. Perhaps the following may explain it.

“For that impressions, made at Newmarket, should not be removed here.”

461. It was usual for the perverse party at court, when the king was to be wrought upon to do somewhat cross to the ministry, to besiege him at Newmarket where they (the ministers) did not attend, and having gained a resolution, at the return to precipitate the dispatch lest better advice should alter it. This seems to have been at the vernal meeting and agrees with the former conjecture; for the experiment was tried not long before the meeting of the abhorring parliament.

462. His lordship follows this with these queries.

“Why such a stir to oppose petitions?”

It was foreseen that the parliament would be very severe against the anti-petitioners; and who should be moved to oppose them but such as were already obnoxious? and that course was most like to expose them to the fury of the parliament. And this was a hopeful way to have the king's friends torn from him.

463. “Why must judges be commanded to discountenance one, and to show a diversity?”

This was noted elsewhere, where it is remembered that the Earl of Sunderland (always in dark practices), in the abhorring vacation, ordered the judges as here is queried; and withal to declare that the laws of recusancy should not extend to protestant dissenters.

464. “Why commissions purged upon that point?”

That is, for being concerned with the petitioners, or at least not being active in opposing petitions.

465. “Why corporations held to the oaths?”

These oaths were proper for officers in corporations; but it was required they should be pressed upon all freemen, contrary to law.

was written in these papers, he might see his inside and have a thorough knowledge of the inner-man, his excellencies, and imperfections. (*Note in the original Edit.*)

466. "Why were commissions of association pressed; and the bailing of the Earl of Danby?"

When the charter justices would not, as they seldom would, do their duty against sectaries and seditious persons, it was urged that the king should associate other justices out of the country by special commission, to sit and act in the corporation with them. I do not remember that any of these issued; but the legality of them was more than suspected; and they would have malcontented the corporations, having the clause *ne intromittant*, in the highest degree. And as to the bailing of the Earl of Danby, who lay committed upon an impeachment by the parliament, it was urged that it should be done by the oyer and terminer at the Old Bailey. His lordship was of opinion it could not be done.

467. "*Causa patet.*" The reason is plain.

All these matters were extraordinary and irregular, but would have been matter of furious blame in the House of Commons and fallen hard upon the king's forward friends. And that was it which his lordship understands to have been the intent of the Earl of Sunderland and others that pushed them; and not a little pointing to aggravate his case in parliament. But this will appear more luculently in the next.

468. "Why must I discharge the jury for fear of a presentment; and such ado about the sheriff of London and application to discharge others after ill ex. and Rec^r. put K. upon it, and Sec. I come of that mess.

"*Causa eadem.*" The reason is the same.

It was foreseen that the ignoramus jury, at the sessions, would present the Duke of York as a popish recusant. To prevent this by a discharge of the grand jury would have drawn an accusation; as for the like the judges of the King's Bench were impeached. His lordship put by this indiscreet, or rather treacherous, pass, and let the presentment come and then it was immediately removed by a *certiorari* which did not afford any matter of charge. The stir about the sheriff of London, I suppose, was the order to reform the panel, noted in the Examen; which was much squeak and no wool, but an impertinent contention to no profit. And that order was managed and carried by his

lordship, and some of the panel discharged; which he thought of no good example, and deems that the Recorder Jeffries and the Secretary Sunderland, put the king upon insisting that, not being against law, it should be done, and also that those courtiers intended by it to heap coals of fire upon his lordship's head.

469. "To make electors take the corporation oath and charge the judges to see good juries of anti-petitioners, and scrutiny afterwards."

This of oaths was touched before; but this brings it to the parliament; which would have been termed downright packing the parliament, though, as to choice, it had signified nothing: for, at that time the temper of the public would not admit a choice fair for the crown; and these provocations did but exasperate the ill humour: and the charge to the jury was an egregious trepan; but frustrated as hath elsewhere been noted. I am not satisfied as to the meaning of scrutiny afterwards. Perhaps it intends an inquiry into the behaviour of the judges, and who obeyed orders and who not.

470. This following passage is somewhat remarkable, and therefore I shall insert it here.

"Mich. Sir Edward Hales."¹

This Kentish knight was a man of florid parts, and had made some undue advantage in dealing with one of the sons of Mr. Lechmere a bencher of the Middle-Temple. This was referred to his lordship; who, finding the case foul on the part of Hales, determined against him. But at this time Hales, though somewhat concealed, was no better than a papist and had engaged all the court interest of that party to urge in his favour; which gave his lordship no small trouble and occasioned this remembrance of him, intended to be explained at leisure. After his majesty's demise this Sir Edward Hales declared himself a papist, and was a busy agent in managing the projects of that party in Kent.

471. His lordship had some affairs upon his hands which were difficult to manage; and those he noted under the title "*difficilia*," or difficulties.

¹ On Sir Edward Hales, see Macaulay, ch. vi., and other references which may be found in the Index.

“Want of pension.”

That is an addition of £2000 per annum more; for the Lord Nottingham had £4000 per annum, which, to his lordship, was screwed down to £2000, on pretence of depending on the king's bounty rather than bargain. And it seems he had an intent to have moved on this head; which was a difficult matter for a non-courtier to undertake.

472. “Controversy *inter* grands, E. of Rochester and M. Halifax.” Disputes among the great ones; E. of Rochester and M. Halifax.

This was about the contract with the farmers of the excise and hearth money; of which before.

473. After the king's demise and his brother James succeeded his lordship was overwhelmed with sorrow; and however commonly he was used to give vent to his troubles and, by converse with his nearest friends, ease his mind, now it was too full and he held it in to his great oppression and expresth himself in his memento thus.

“*Ne redintegrentur planctus et contemplatio dolorosa et gemitus maximi et continui, et pavor erga omnia et torpor et insomnia.*”

Let me not disquiet myself afresh with lamentable and melancholy apprehensions of what may happen; or renew those excessive and continued groans attended with fear on every side which break my rest, and even deprive me of my senses.

474. His lordship saw no end of evils that impended on this change and here tries to ease his mind upon his paper in this pathetic prescription.

“*Deus dedit occasionem optimam quæ minime est negligenda; solatium enim est nimis breve et subito transit.*”

God has given a favourable opportunity, which must not be let slip; for the comfort I shall have is but for a little while and will soon pass away.

This respects his purpose of quitting the seals, whether it were upon occasion of the king's demise or in the time of his last sickness:—when that purpose was confirmed in him and he did what he could to put it in execution doth not appear in this paper. I am inclined to think the latter; and the occasion to have been his weakness which most

was sensible to him at that time: and then he reflects on the consequence.

475. "*Semper idem ; otium dat observationem et pascit lienem.*"

Never the better; leisure does but give time to think and feeds the spleen.

This reflection is very profound; for it is a vanity to expect ease in retiring from the world; for the case will be still the same. A man cannot run from himself but his thoughts will follow him; and if he has not troubles from without to divert, he will have more attention to himself; and splenetic humour, of which his lordship was afraid, will arise. But for an inward comfort, as he was he contrived this *Speculum*, entitled

"*Bene.*"

Well.

"*Conditio aptissima.*"

His qualifications most fit for the justice of the chancery.

"*Honor augens et divitiæ.*"

Increase of credit and riches.

"*Reverentia universa.*"

Universally respected.

"*Societas exoptata.*"

The desirable company of his brothers and friends.

"*Negotium continuo divertens.*"

Kept in full employ by the business of his place.

"*Beneficentiam exercens.*"

Doing good to his friends and servants.

"*Modestia laudata.*"

Approved modesty.

476. The next is a *speculum* of all the evils that may happen, with the apt remedies applicable to them; and this he titled *Speculum Magnum*.

"*Quid causæ ?*"

What is there to make me uneasy?

"*Inopia ?*"

Satis quod sufficit aut nunquam."

Want?

Enough, now or never.

"*Onera ?*"

Corpus sanum sit ita mens."

Difficulties?

Sound in body let me keep my mind so.

"*Metus ?*"

Objectum nullum nisi phantasma."

Fear ?	Nothing but fancy to affright me.
" <i>Infamia</i> ?	<i>Notus es et expectatio vera.</i> "
Disgrace ?	They knew you and you have not balked their expectation.
" <i>Pudor</i> ?	<i>Irrationabilis et abigendus.</i> "
Shamefacedness ?	Unreasonable and to be drove away.
" <i>Solitudo</i> ?	<i>Remedium amarius.</i> "
Solitude ?	Worse than the disease.
" <i>Senectus</i> ?	<i>Levamine indiget.</i> "
Old age ?	That wants support.

477. His lordship perceived plainly that the adverse party were setting up Jeffries to supplant him and gave him all encouragement to be troublesome; which, as his lordship thought, might induce his giving way to make room for him. And regarding that case his lordship wrote this and titled it, *Speculum alter*.

" <i>Null. pavor de penur.</i>	Not afraid of being in want.
" <i>Null. reproach pro ebrietat.</i>	Not reproached for drunkenness.
" <i>Null. Magdalen Compl.</i> "	No ways concerned in the complaints from <i>Magdal. College</i> . ¹

These seem somewhat comparative; for Jeffries was tainted with all these.

478. His lordship framed another *speculum* respecting a private state, which had place in his soliloquies, and is entitled *Speculum tertium*.

" <i>Optimum retire.</i> " ²	It may be best to retire.
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After all the advantages he could propose to himself in his Keeper's high station, a private life was safest and best.

¹ Whatever else may have been meant by this note, it is certain it cannot refer to the contest between James II. and Magdalen College, Oxford, which broke out two years after the death of the Lord Keeper. Roger North, writing late in life, evidently forgot the date of these transactions. The probability seems to be that reference is made to something entirely different in its character.

² Did the Lord Keeper *really* write *retire*?

"*Turbatio bene interpret.*" My confusion would admit of a favourable interpretation.

The disturbance he found in his attention and countenance, which is touched elsewhere, would have no ill construction as he thought it might have upon the bench.

"*Satis quod sufficit.*" I have sufficient.

Non-increase of wealth no grievance while he had sufficient.

"*Colbert pro posteris.*" Let posterity think of Mr. Colbert.

This great favourite under disgrace was very ill used; and let that concern his successors; as for himself.

"*Fouquet pro present.*" As for the present, let Fouquet be an example.

Disgraced also and dealt ill with; but then turned loose to shift for himself.

"*Quid timendum?*" What have I to fear?

Here his lordship accuseth himself for using the instances of these disgraced ministers, who acted high in matters of state and war and might be obnoxious. But he acted in a confined post, and having a good conscience and nothing of mal-administration or corruption to be laid to his charge, what had he to be afraid of?

"*Promotus es, et omnes defectus ante apparuerunt.*" They promoted you and knew all your failings before.

If he were unfit for a court station, as he suspected himself to be, and they must needs know it beforehand; why did they not let him alone but promote him? This lays his own failings at their door.

"26 Sept. 1684, lord chief justice of the cabinet council much to my ease and relief."¹

479. It was obvious that this bringing Jeffries forward was to prepare him to succeed his lordship, then, by the rising party, resolved to be laid aside to make way for him.

¹ Jeffries was made of the Privy Council 4th Oct., 1683, he being then Chief Justice of the King's Bench. In the Lord Keeper North's note it appears he became member of the Cabinet at the date indicated. On the supersession of the Privy Council by the Cabinet see some important remarks in *Hallam's Constitutional Hist.*, ch. xv. vol. iii. p. 184 (10th ed.).

But the king had no such thought and, if he had lived a little longer, he had broke all their schemes. I heard his lordship say that he took an opportunity to thank his majesty for the ease he gave him in this pass, as to advising his majesty in matters of law ; but he did not say that the king made him any answer.

480. But as to the motion for pardoning all recusants, mentioned elsewhere, the job for which Jeffries was especially introduced and which was (singly) opposed by his lordship, I find a paper in which his reasons are concisely expressed.

“ Papists, 2 October, 1684.

“ There is no need (for such pardon), for if they are not punished they will be envied, not being sheriffs, justices, deputy-lieutenants, jurors, &c.

“ The punishments are but three. 1. Præmunire. 2. Thirds. 3. Disability upon convictions.

“ They avoid the first by bribing gaolers, under-sheriffs, and bailiffs, so that they are not in prison.

“ And, 2. Nothing being found, nothing is levied.

“ And, 3. They may be brought under disability at the suit of a common person.

“ This will discontent the gentry and make them lean on the other side.

“ Their hearts cannot be lost ; but should serve cheerfully : else the whole use of the law is lost ; for they are sheriffs, &c.

“ If the gentry are discontented the rabble will quickly be poisoned by preachers, &c.

“ And then what will force signify though not opposed ? If they are cursed, whenever any disorder comes upon them they pay for it.

“ A revolt of the least part, to the temper of the people, prevails against all the rest. Any foreign war or remote rebellion will bring it.”

“ Be no more angry with superiors for not doing as you advise than they are for your not advising what they would have done.”

This is a prudent memento for counsellors of state, to keep down anger and discontent when their advice, though most salutary, is not taken.

481. In the parliament in the reign of King James II. the experiment was tried whether the commons would allow military officers to serve without taking the tests against popery: which was with a temper refused; for it was offered to dispense in particular (by name) but not in general. The tendency of the court was to have the test laws wholly set aside; for which this of the military men was to have been an overture to let in the rest. But this refusal made it improbable that the parliament would ever be brought to it. Whereupon followed the point whether the parliament should be prorogued, or dissolved. The desperate party were for dissolving and using means to procure elections that should be better inclined; and if that failed, to do it by his majesty's authority and shifting without any parliament at all. And what followed afterwards, viz. of closeting, regulating, &c. the histories must show. In the mean time his lordship's counsel, not to dissolve at present but to prorogue, was taken; and absolutely contrary to his counsel, the parliament was at last dissolved. Which pass was, in consequence, as matters were carried, the ruin of King James II. But in the working of these matters his lordship discerned plainly a design to change the government. Which gave his lordship many melancholy reflections; and, as hath been showed elsewhere, disposed him once for all to be free with his majesty and show him his danger; which he did and, in a scrap of paper, hath preserved his reasons under a title taken out of the *Arcadia del Carpio*.

“*Pensamientos meos caminad sin miedo.*”

My thoughts walking by myself without fear. [?]

“1. Question of right is most plain.”

This refers to the parliament, and the triennial act.

“2. Condemnation of past actions for not doing it.”

For all antecedent passages, as the stop of the Exchequer, indulgences, Dutch war, French alliances, &c. for which the faction had formerly caluminated the court, will be again ripped up and charged as a continual design of arbitrary power.

“3. Indifferent men lost, and those the gentry.”

These were such as were not attached to the court but followed for duty and public good.

"4. They will be a torrent irresistible. Better an ague than a fever."

The clamour upon breaking the triennial act. The ague may mean some discontents and differences with the parliament sitting; but the fever is the discontent of the whole people without parliaments.

"5. Old law not clear in the intent yet foundation of the triennial act, odious, this is positive."

The old law was that there should be a parliament every year, or oftener if need required. This was once set up to dissolve the long parliament whether they would or no; which the parliament resented, and sent four lords to the Tower; as the histories of the time, and particularly the Examen, will show. By the odious is meant the triennial act in the reign of King Charles I., when, for failure of writs, officers down to constables, were to summon a parliament; but as settled in the reign of Charles II., it is enacted positive for three years, without ifs or ands to colour a discretionary power.

"6. How comes posture to be good but by being in the right?"

This is opposed to the pretence of the courtiers, viz. that now the nation was in a posture of firm loyalty to the crown and would digest any thing; but his lordship thought that what right had built wrong would destroy.

"7. No strength, nor justice, when the people are poisoned and the income depends upon it."

When the people side with the crown, it is strong against sedition: else that will soon grow up into rebellion, and the magistrates will be slow to act and juries will be unruly; which would many ways affect the revenue.

"8. Faction will unite upon this point and press nothing else; and they will have such company as will be hard to resist."

Sects opposite to each other will all unite in this; and the loyal church-party, the nobility and gentry, will all join forces in a matter so popular.

"9. This will be a standing topic, and a continual claim; and it can never be imputed as a favour to have it."

The good will, lost by forbearing parliaments, will not

be recovered by granting them but remain as poison in a wound which will not readily heal.

482. This paper may have been out of the way ; and his lordship wrote upon another to the same intent, but more explicit.

“ 1. Right is plain, positive by new law ; prevail hitherto by being right.”

That which made the crown so firm at this time, was the having done the people right as to parliaments. The people were found to take part with the crown even against the parliament, when that acted exorbitantly.

“ 2. Their actions justified and your's condemned.”

But if there be differences between the crown and parliament and, thereupon, parliaments are discontinued, the people will justify the actions of the parliament however unreasonable and allow no reason for the discontinuance.

“ 3. Torrent of the people irresistible. Neither laws nor arms can prevail.”

This was fatally proved by his majesty when his army revolted ; of which this was a prophecy.

“ 4. Faction will unite and have all on their side.”

See before.

“ 5. They will press nothing but this ; and all other things must yield.”

Whatever matters of discontent have place with the people, they will say nothing of them but urge for a parliament ; and, that obtained, all other grievances will break forth and no good humour to be expected.

“ 6. To dissolve, not discontent all, because minor parts in the house ; and in choosing, they will take part ; but not to call, discontents every man.”

When King Charles II. dissolved his last Westminster parliament he called another at the same time, to meet at Oxford ; but at this time it seemed not to be so intended. Therefore the discontent would take place as if there were to be none at all ; as had happened if King Charles had not prevented the clamour as above.

“ 7. That is always rightfully done but not this.”

That is, the king may rightfully call or dissolve ; but subsist without parliaments he may not.

483. Another paper carries some farther notes to the same intent, which I shall not omit.

“1. Whether change the government. Suppose not.”

It was not pretended that the government should be changed as to laws, taxes, &c. But this note seems to suspect it.

“2. If can subsist against a general discontent. Guards will be no real help.¹ Revenue disputable and transitory; not like land, but popular.”

This query is answered in the negative. Guards may revolt. Revenue riseth by collection from the common people. And, being mostly temporary, who should renew it? For it is not like land, which is not contentious and is perpetual.

“3. If cause discontent, justly, or actually?”

That is, discontent is caused; whether justly or not, so long as it is actually so, the effect is the same. Some courtiers argued that they were not to regard discontents; for there will be such in all governments; and if there must be no discontents there must be no government at all. But is there no difference between discontents with and without just cause?

“4. If dissolving can cause such discontents?”

This may be answered affirmatively; for dissolving hath often been counted a grievance. Then the argument runs, why should you cause discontent if it may be avoided?

“5. What consequence when the parliament doth meet?”

Lamentable.

“6. Lamentable; reflection upon fair weather and security. Better an ague fit than a calenture.”

This answers the former; and when the parliament meets, at worst it is but as a fit of an ague, a turn of cold and heat and then fair weather and security for a time; which is better than calenture without intermission with danger of concluding in destruction.

484. It may be thought that much of these notes here

¹ See Lord Essex's letter to the king, pressing him to dissolve his new guards. (*Dalrymple's Appendix*, p. 231.)

might have been spared, being dark and the matter, in some points, repeated. But considering that they contained the substance of what his lordship advised the king with respect to his safety by parliaments and the nation's peace, I would not drop any syllable that I found wrote by himself of the same matter, although in a different phrase. For the image of his lordship's interior thoughts, both as to himself and his duty to the public, are here painted in most lively colours; the like of which I have not known to appear in any other written life. I have ventured to annex a sort of comment, but am not sure I have touched his intimate sense in all points; but having heard him discourse over most of the public matters, I believe, I am not much out of the way.

485. His lordship began to find himself decay, and who could hold out long and strenuous in such deluge of affairs and all laid to heart, and not, as with some, let pass slightly? And he began to complain of disturbances, which he termed the upper flowing of his blood, in these words as his pen left them on a scrap of paper.

"Sursum flux sanguinis, qu. causam, prospice finem; det Deus. Speculum consule."—Flux of the blood upwards. Qu. the reason. Look for your end. God give it. Consult your speculum.

This imports more than a rubor in his countenance, which he sometimes thought too much, but some disorder that he found in his head imputed to such flux upwards. This, as I take it, was not long before his fever and, at that time, letting blood might have prevented it; but he always was averse to that operation and seldom or never used it. I believe here we want a speculum; for those that were found do not correspond with this case.

486. I have already showed that, after his lordship had come out of his acute fever and laboured under a consuming hectic, he found his strength continually decay and resolved to quit the great seal and retire, hoping that way to recover his health; and wrote to the Earl of Rochester to procure him the favour of his majesty's acceptance of it. But the the earl put him off, desiring his lordship might continue keeper and be a screen to him in staving

off the Popish work. And thereupon his lordship wrote to him the following letter:—

“MY LORD,

June 11, 1685.

487. “Having once discovered to your lordship” (his petition for leave to resign the seals,) “the effect of melancholy, you may believe it still in my constitution and think what I write proceeds from it. But I pray believe that, if there had not been an apparent necessity, I should not have been so abrupt at such a time in the middle of a parliament. The truth is, every night is a painful fever to me and my stomach wholly gone; and having an opportunity these holidays to do something towards my health, I put myself into the hands of a doctor who assures me of a speedy cure by entering into a course of physic. My lord, this were nothing if my strength would serve me. I would defer complaining though with hazard of my life. But my weakness is such, and the pains of my head so great, that I can hardly hold up my head. I am confident I shall not be able to do it many days. I will be at the house to-morrow, if I possibly can, to wait on your lordship.”

This produced the leave his lordship had to retire, with the seal, to Wroxton, where he died, as has been before related.

488. Now to conclude with a summary character of his lordship. He was descended of a noble family, virtuously educated, an early student of the law, signalised in his first performances, preferred for his abilities; passed gradually from the meanest initiation of practice through every degree of business and preferment in the law; court keeper, practiser in the King’s Bench, chief in his circuit, king’s counsel, solicitor-general, attorney-general, chief justice of the Common Pleas, lord keeper of the great seal, and created a baron: and in all this walk trod upon no man’s heels; for he entered only by vacancies and never by ungrateful removes, and was helpful and a friend to those whom he succeeded; especially the Lord Nottingham who almost owned him for his successor. Whilst he was chief justice he was taken into the privy council, and then into the cabinet. He travelled most parts of the kingdom as judge in the several circuits, and gained the

friendship, I had almost (and well I might have) said the love of the chief gentry of England, who afterwards stood by him against divers attempts to remove or dishonour him. And notwithstanding his continual employments in church and state, and many thought his room or rather his places worth crowding for; and however in nice matters it is more than human not sometimes to err, yet he stood against all as a rock immovable; and nothing was ever found, even by the most discerning of a popular faction, that would or (with truth) could impeach his fame, probity, or honour. He served the crown steadily and according to law; and ever gave cogent reasons in public for what he did. No impression of fear, flattery, or interest, did ever taint or divert his justice. In his person he was modest to extremity, and yet, in doing his duty, enough assured. He was a declared enemy to all pomp and vain glory. He was not an orator as commonly understood, that is a flourisher, but all his speech was fluent, easy, and familiar; and he never used a word for ornament but for intelligence only; and those who heard him speak, though in ordinary conversation, had scarce room left to ask any explication or enlargement. He was a lawyer (modestly speaking) not inferior to any of his time, and knowing in records and histories not only of England but in general. He was master of the European languages, as French, Italian, and Spanish, and had entered into those of High and Low Germany. He was adept in natural philosophy and mechanics and no stranger to the mathematics. A musician in perfection, both practice and speculative; being a performer, composer, and (in print) a philosopher as to the most recondite secrets of that art. He was covetous of nothing more than the society of the virtuosos of his time, as Lely, Moreland, May,¹ Moor, Flamstead and others of that tribe, who all courted him and embraced his conversation and many owned to profit by his encouragement and protection. He was civil and affable to all, and conversed even with his enemies without offence, and hated to be

¹ Hugh May, comptroller of the works at Windsor Castle, and one of the commissioners for the rebuilding of St. Paul's, an architect of considerable repute.

waited upon when he might give dispatch. His course of life was unexceptionable; no manner of vice encouraged nor by him known within his walls. His diet plain and meals hospitable and profitable. His most intense study was to amend whatsoever he found amiss and amendable, where his employments gave him means and a latitude to do it. His zeal was to do all the good he could to his country; and that he thought best done by supporting the church and crown of England in all due and legal prerogatives; and thereunto he adhered during all his life; and no motive whatsoever made him swerve. Whatever he did in public was legal and effectual, without any affected lustre or handles to fame if he could avoid them. No wonder he is so soon forgot. He never had nor asked for profit, any boons of his majesty; and at the end left but a moderate estate to his children, which one would think should have been by common profits much more: but thereby he demonstrated that corruption had no share in what he left. In short, he had a virtuous disposition, orderly and regular course of life, void of all pride and affectation; the utmost regard for truth and right; a vast extent of skill in the law and national constitution and knowledge of men and the world; the love and esteem of the best; impartiality in his justice and dexterity in the forms and administration of it; sense of his duty, public and private, with industry and affection duly to perform it; he was patient in hearing, modest in determining; compassionate in severities, orthodox and exemplary in the established church, and averse to all its enemies; for all which he had a visible temporal reward; and that is, dying as he lived without stain or diminution of his honour, authority, or greatness, in the height of which he left the world. This character which I have here given, is not out of opinion, rumour, or any means of fame whatever, but the result of my own personal knowledge and proof; and at the hour of death, I can veritably swear to every article of it.



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